

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Edward Pugh (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Kevin Fowler, Kansas Healthcare Association
Tom Murray, Insurance Center, Inc., El Dorado
Larry Magill, Kansas Association of Insurance Agents
Jerry Wells, Kansas Insurance Department
Garen Cox, Medicalodges, Inc.
Debra Zehr, RN, MA, Vice President, Kansas Association of Home and Services for Aging
Kirk Lowry, Kansas Advocacy and Protective Services
Deanne Bacco, Kansas Advocates for Better Care
Ami Hyten, Topeka Independent Resource Center
Pedro Irigonegaray, Kansas Trial Lawyers Association
Kevin Siek, Kansas ADAPT
Dr. Ernest Pogge, Chair of the AARP Kansas Topeka Advocacy Satellite Group

Others attending: See attached list.

Chairman Vratil announced the Committee had five bills to work final action, and one bill scheduled for hearing with 12 conferees.

Final Action:

SB 422 - Capital murder, if sentence of death not imposed, imprisonment for life without the possibility of parole

Chairman Vratil called for discussion and final action on **SB 422**. The Chair explained the bill and stated the Committee needed to decide how they wanted to deal with juveniles in this bill. He said currently juveniles would be subject to the provisions of the bill which provides for life imprisonment without the possibility of parole. He reviewed with the members information received from Donna Lyons, NCSL, regarding what other states are doing in this matter. (Attachment 1)

Senator Goodwin made a motion to amend **SB 422** to eliminate juveniles from being eligible for the death sentence or life without parole because she thought juveniles sometimes can not really use all their faculties before the age of 18. She believed they could be rehabilitated.

Senator Goodwin made a motion to delete Section 2, which would leave it as current law stating that juveniles are not subject to the death penalty but are subject to a "hard 50", and renumber subsequent sections. The motion was seconded by Senator Allen, and the motion carried.

Chairman Vratil stated that the Committee needed to decide whether adults should have the possibility of a death sentence, life imprisonment without parole, and a "hard 50". He recounted the Committee's previous discussion on the bill. If the choice was made to leave in the "hard 50", it would diminish the bargaining leverage prosecutors have. It would also diminish part of the purpose of the bill which is to give juries the option of life imprisonment without parole. The Chair reiterated the bill would give the juries the option of the death penalty or live imprisonment without parole. It would not include the "hard 50" for capital murder. He asked if anyone wanted to offer an amendment to add the "hard 50" as a third option.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

Senator Donovan said there was a place for the "hard 50" for a 19 or 20 year old. It would be a more appropriate and goes along with eliminating the under 18 sentence. If that is taken away, the state is defeating part of the reason that Kansas doesn't execute juveniles. The "hard 50" was a tough sentence, and Kansas does not consider it unless it is a very bad crime.

Senator Donovan made a motion to offer the third option, and not receiving a second, the motion failed.

Chairman Vratil said he had an amendment to submit on behalf of Senator Schmidt, who was not present. It was a clarifying amendment inserted at the beginning of line 21, Page 1, of the bill, adding the following additional language : "A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the his natural life incarcerated and in the custody of the secretary of corrections." (Attachment 2)

Chairman Vratil made a motion to offer the amendment for discussion purposes, and seconded by Senator Allen.

Senator Haley inquired if there was any other gender specific language in the amendment or bill since it referred to "his" natural life. The Chairman said he had also noted that, and suggested that the amendment be changed to "shall spend the remainder of the defendant's natural life....", and that will be the motion to exclude the gender specific language.

Senator Goodwin stated that the Legislature had passed a law which said if an inmate was terminally ill, the inmate can be released to somewhere outside the Department of Corrections. She believed that **SB 422** would conflict with the bill covering terminally ill inmates. The Chairman agreed that **SB 422** would conflict.

The Revisor, Jill Wolters, explained that as originally drafted she thought that this statute controlled 2237, but Senator Schmidt's amendment would make it appear to be contradictory. She suggested that the Committee add language to the amendment saying "except as provided by K.S.A. 22-3728. The Chairman stated with the permission of the second, he would add that change to the language of the amendment. As the second, Senator Allen agreed.

Chairman Vratil called for a vote on the motion. The motion carried to amend **SB 422**.

Senator Goodwin made a motion to recommend **SB 422** favorably as amended for passage, seconded by Senator Schmidt, and the motion carried. Senator Donovan requested his "no" vote be recorded.

SB 423 - Wage garnishment, assignment of account

Chairman Vratil called for discussion and final action on **SB 423**. The Chair explained the bill and noted there was a technical amendment on Page 2, line 40, changing sub-section (g) to sub-section (f). Senator O'Connor made a motion to adopt the technical amendment, seconded by Senator Donovan, and the motion carried.

Senator Schmidt made a motion to recommend **SB 423** favorably for passage as amended, seconded by Senator Donovan, and the motion carried. Senator Haley requested his "no" vote be recorded.

SB 424 - Transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause

Chairman Vratil called for discussion and final action on **SB 424**. The Chair explained the bill and three proposed amendments. He said the first amendment was language suggested by Columbia National Title Insurance Company which would make the bill acceptable to that industry. The second amendment would strike language relating to other forms of insurance, and the third amendment borrowed language in federal law that "prohibits exercise of due on sale clauses when residential property is transferred into a trust." (Attachment 3) The Chair announced that since the Committee had not had a chance to study the amendments, he was going to suspend the hearing until tomorrow in order to give the Committee members a chance to study the offered amendments.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

SB 430 - Results of a survey or inspection report of an adult care home used only for determining compliance with state law; not admissible as evidence in a civil proceeding

Chairman Vratil opened the hearing on **SB 430**. Kevin Fowler testified in support of the proposed bill on behalf of the Kansas Healthcare Association. Mr. Fowler said the proposed legislation is modeled after a law in Ohio. He explained that the Kansas Department of Aging and other entities conduct quality inspections of nursing facilities and other long-term care provider facilities. These inspections are documented and include objective and subjective results. Mr. Fowler explained that nursing facilities are highly regulated, and strive for quality care through volunteer quality improvement programs and procedures. He stated that documented deficiencies are considered a "peer review", and a resident's medical record is the best record of a facility's practices and outcome. He concluded that the justification for this bill was cost since liability insurance premiums are escalating. (Attachment 4)

Tom Murray, Insurance Center, Inc., spoke in favor of **SB 430**, and explained that the state surveys have become a real issue in the underwriting and pricing of insurance coverage. He stated he believed that if the state surveys were not allowed as evidence in lawsuits, long term care facilities would be able to defend themselves against claims of negligence and that pricing and insurance availability would improve. (Attachment 5)

Larry Magill, Kansas Association of Insurance Agents, testified in support of **SB 430**. He explained that the reports were being used as an underwriting tool because they are used in the courts. (No written testimony submitted)

Jerry Wells, Kansas Insurance Department, talked about the lack of insurance availability for adult care homes due to poor inspection report ratings; consequently, care homes were forced to find coverage in the non-admitted market where the Insurance Department does not have authority. He stated that currently there is only one admitted carrier providing such coverage in Kansas and only to not-for-profit facilities. (Attachment 6)

Garen Cox, Medicalodges, Inc., submitted written testimony in favor of **SB 430**. (Attachment 7)

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, submitted written testimony in support of **SB 430**. (Attachment 8)

Committee questions and discussion followed the testimony of the proponents.

Chairman Vratil called upon the first opponent of **SB 430** to testify. Kirk Lowry, Kansas Advocacy and Protective Services, testified against the proposed legislation because of its content and the principals on which it was proposed. He explained that adult care home inspection reports, Health and Human Services compliance reports, and other required reports are indicators of whether or not a particular care home is complying with applicable laws and regulations required for cleanliness, quality of food, recreation activities for residents, and, most importantly, they are reports that address the quality of care and treatment of the individuals who live there. He said the passage of **SB 430** would be the ultimate abuse of the people who live in adult care homes, a denial of their right to defend themselves by what is all too often their last line of defense, due process of law. (Attachment 9)

Deanne Bacco, Kansas Advocates for Better Care, testified in opposition to **SB 430**. She related that nursing home inspection reports and related documents are public information according to state law. She said that the federal government's website for the Centers for Medicare and Medicaid Services (CMS) provides the information for anyone to view and download. Ms. Bacco stated that the proposed change in **SB 430** is counter and contrary to the intent of the federal law. (Attachment 10)

Ami Hyten, Topeka Independent Resource Center, testified in opposition to **SB 430**. She stated that the bill was a thinly veiled attempt to undermine the constitutional right to civil trial by jury for some of the most vulnerable and valuable citizens, elderly Kansans. She said the effect of this bill would be to insulate the most egregious violators, those being the facilities demonstrating a pattern and practice of neglect and abuse, from accountability. Ms. Hyten attached information she had copied from the U.S. Government's website for people with Medicare. (Attachment 11)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

Margaret Farley appeared in place of Pedro Irigonegaray, representing the Kansas Trial Lawyers Association, but submitted written testimony in strong opposition to **SB 430**. (Attachment 12)

Kevin Siek, Kansas ADAPT, testified in opposition to **SB 430**. He said that the proposed bill benefits the worst offenders by limiting the scrutiny that courts can apply, particularly in cases where there is a pattern and practice of abuse and neglect. He stated that it was this kind of legislation that keeps Kansas ranked among the top ten states that provide a substandard quality of care in their nursing homes. (Attachment 13)

Dr. Ernest Pogge, Chair of the AARP Kansas Topeka Advocacy Satellite Group, spoke in opposition to **SB 430**. Dr. Pogge stated during his testimony that AARP believes there is a need for effective oversight of nursing homes, combined with strong sanctions for health and safety violations. He said that AARP opposes efforts to deregulate the nursing home industry, and supports strong federal nursing home quality standards. (Attachment 14)

Following a brief discussion period, the Chairman adjourned the meeting at 10:30 a.m.

The next scheduled meeting is February 19, 2004.