

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on February 8, 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:

Tom Witt, Chairman of the Kansas Equality Coalition
Pedro Irigonegary, Counsel for the Kansas Equality Coalition
Jon Powell, Chairman of the Kansas Equality Coalition of Hutchinson and Reno County
Justin Edwards, Kansas County and District Attorneys Association
Jennifer Roth

Senator Rob Olson

Others attending:

See attached list.

The Chairman reminded members of the committee and members of the audience of two of the Committee Rules:

- All cell phones are to be turned off, except cell phones of a physician
- Video-taping or recording of the committee meeting is not allowed without the prior approval of the Chairman

The Chairman opened the hearings on **SB 56 — Amending the crime of criminal sodomy.**

Jason Thompson, Staff Revisor, reviewed the bill.

Tom Witt, who requested introduction of the bill, provided testimony in support of **SB 56 (Attachment 1)**. He stated the Supreme Court found that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the U.S. Constitution in *Lawrence v. Texas*, 539 U.S. 558 (2003). He stated that even though the current wording of the Kansas statute is not constitutional a person may be arrested for violating the statute and held for bail or arraignment until a judge reviews the case.

Pedro Irigonegary provided testimony in support of **SB 56 (Attachment 2)**. He stated that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the U.S. Constitution. He added that the Kansas criminal sodomy law illegally permits wholesale discrimination against lesbian, gay, bisexual and transgendered people.

Jon Powell provided testimony in support of **SB 56 (Attachment 3)**. He expressed concern that the law as currently written will be enforced if it is not amended.

Senator Kelly asked, “What would happen if a person was arrested for criminal sodomy?”
Mr. Powell responded, “The person could be jailed until released by a judge or until the person posts bail.”

Senator Haley asked, “Would the office of the repealer need a bill to accomplish this archaic and unconstitutional statute?”

Jason Thompson, Staff Revisor, responded, “Yes.”

CONTINUATION SHEET

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No testimony in opposition to **SB 56** was submitted.

The Chairman called the committee's attention to the fiscal note and the prison bed impact statement for **SB 56**.

The Chairman closed the hearings on **SB 56**.

The Chairman opened the hearings on **SB 63 — Amending the crime of sexual exploitation of a child.**

Jason Thompson, Staff Revisor, reviewed the bill.

Justin Edwards, appearing for Mark Bennett, testified in support of **SB 63** (Attachment 4). He stated the bill would amend the crime of sexual exploitation of a child to include acts by an offender who believes that the child being enticed is less than 18 years of age.

Senator Bruce asked, "Isn't the situation described a "mistake of fact" situation and, therefore, the offender should be charged with attempted sexual exploitation of a child?"

Mr. Edwards explained that the crime of sexual exploitation of a child is a severity level 5 offense that carries a higher penalty than the crime of the attempted sexual exploitation of a child, which is a severity level 7 offense.

Jennifer Roth, appearing as an individual, testified in opposition to **SB 63** (Attachment 5). She stated that current law already addresses such situations in the crime of the attempted sexual exploitation of a child. She suggested that the committee should tailor the fix by amending the crime of electronic solicitation. She believes the bill criminalizes people for possessing legal items. In addition, she believes the bill makes it illegal to "THINK" certain things about legal items and questions the constitutionality of the bill.

The Chairman called the committee's attention to the fiscal note and prison bed impact statement for **SB 63**.

The Chairman closed the hearing on **SB 63**.

The Chairman opened the hearings on **SB 39 — Creating the classification of aggravated sex offender; creating additional penalties and restrictions for sex offenders.**

Jason Thompson, Staff Revisor, reviewed the bill.

Senator Olson, who sponsored **SB 39**, testified in support of the bill (Attachment 6). He stated that it was his intent to create a safety zone around schools and increase the scrutiny of sex offenders whose victims are under the age of 16.

Attached to Senator Olson's testimony was written testimony in support of **SB 39** submitted by:

- Eddie Hamilton (Booking Form)
- City of Topeka, Resolution supporting the strengthening of state sex offender laws
- Larry Campbell, Olathe, Kansas
- Diena Thompson, President Somer Thompson Foundation
- Tammy Khalifeh
- Rana Khalifeh
- Mitchell Prothe, Olathe
- Donna Sibaai, Wichita
- Lesley Ramirez, Olathe Kansas
- Shane Wood
- Jim Skelton, Wichita

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In addition to their written testimony submitted by Senator Olson, Michell Prothe and Lesley Ramirez rose to express support of **SB 39**.

The Chairman announced that the hearings on **SB 39** would be continued to a later date.

Meeting adjourned at 10:30 A.M. The next meeting is scheduled for February 9, 2011.