

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:33 A.M. on February 21, 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

Others attending:

See attached list.

The Chairman opened the hearings on **SB 176 -- Making lawful presence in the United States a specific consideration in determining conditions of release for a person charged with a crime.**

Jason Thompson, Staff Revisor, reviewed the bill.

Senator King, who had requested introduction of **SB 176** at the request of an Overland Park police detective, stated that the bill would make lawful presence in the country a factor of consideration when determining whether to release a person charged with a crime. He added that a person's immigration status weighs heavily in the flight risk of that person.

Senator Vratil asked, "If a person does not have his birth certificate or passport in his or her possession when arrested, how does a person prove lawful presence at the first hearing. If a person does not possess either of those items at the time of arrest, is the first hearing continued or is bail set at a higher amount?"

Senator King responded, "Lawful presence would be just one more factor to consider."

Senator Schodorf asked, "Will the bill give the magistrate more latitude to set higher bail?"

Senator King responded, "Yes."

Senator Schodorf asked, "If a person is found not to be lawfully present, will ICE be notified?"

Senator King responded, "The first step is to notify ICE. What happens after that is up to ICE."

Senator Kelly noted that the fiscal note states the bill would have no fiscal effect, but is that true for counties. She noted that if the accused cannot afford the amount of bail that is set, or if bail were denied, the county would incur costs.

Senator Vratil asked, "Could the magistrate consider lawful status under current law? Is not unlawful presence a crime and therefor it could be considered under current law?"

Senator King stated, "The bill would resolve any doubt that it could be considered."

Written testimony in support of **SB 176** was submitted by Shane Rolf, Kansas Professional Bail Bonds Association (Attachment 1).

No testimony in opposition to **SB 176** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 176**.

The Chairman closed the hearings on **SB 176**.

CONTINUATION SHEET

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Committee Action:

Senator King moved, Senator Lynn seconded, that **SB 176** be passed. The motion was adopted.

The Chairman turned the committee's attention to **SB 9 -- Code of civil procedure; updates and technical amendments.**

Jason Thompson, Staff Revisor, reminded the committee that **SB 9** was introduced as a clean up measure to legislation enacted in 2010 that brought the Kansas code of civil procedure in conformance with the federal rules. Mt. Thompson distributed and explained a proposed amendment, which would amend K.S.A. 60-228a (Attachment 2).

Senator Vratil moved, Senator Bruce seconded, that the amendment as proposed in the balloon distributed by Mr. Thompson be adopted. The motion passed.

Senator Vratil moved, Senator Umbarger seconded, that **SB 9** be passed as amended. The motion was adopted.

The Chairman turned the committee's attention to **SB 63 -- Amending the crime of sexual exploitation of a child.**

Jason Thompson, Staff Revisor, reviewed the bill. He noted that a violation of subsection (a)(1) as proposed in **SB 63** would be a severity level 5 felony. Currently, a violation of subsection (a) (1) is a severity level 7 felony.

Senator Haley inquired if there had been a revised prison bed impact statement and fiscal note. The Chairman noted he had not received any revisions.

Senator Bruce moved, Senator Pilcher-Cook seconded, that **SB 63** be passed. The motion was adopted.

The Chairman turned the committee's attention to **SB 73 -- Amending criminal discovery statute to prohibit release of child pornography evidence to the defense.**

Jason Thompson, Staff Revisor, reviewed the bill. He stated that the bill would prohibit the reproduction of pornographic images of children during criminal discovery. He also reminded the committee of an amendment proposed by the Office of the Attorney General, which relates to the location at which materials may viewed, inspected or examined by the defendant, the defendant's attorney or person testifying for the defendant as an expert witness (Attachment 3).

Senator King suggested that BIDS should review its contractual requirements for persons who qualify as a computer forensic expert. Under the current requirements, there is only one person in the state who is qualified.

Christopher Joseph, Kansas Association of Criminal Defense Lawyers, stated the problem is not just a matter of contractual requirements imposed by BIDS. He stated there is simply only one person in the state of Kansas who has the qualifications to be a computer forensic expert. He added that there are only 20 to 30 computer forensic experts in the country.

The Chairman turned the committee's attention to fiscal information provided by BIDS (Attachment 4).

Senator Vratil stated that BIDS is currently under-funded and he does not want to do anything that would make that situation worse.

CONTINUATION SHEET

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Senator King directed the following question to Kyle Smith, Office of the Attorney General, "Is it possible that a law enforcement officer could "walk the evidence" to the expert witness and remain while the expert examines the evidence?"

Mr. Smith responded, "That is an option."

Senator Kelly moved, Senator Vratil seconded, that **SB 73** be tabled. The motion was adopted.

The Chairman turned the committee's attention to **SB 79 -- Debt setoff; collection assessment fee.**

Jason Thompson, Staff Revisor, reviewed the bill.

The Chairman turned the committee's attention to information relating debt collections for, and collection assessment fees paid by, District Courts, which was provided by Kent E. Olson, Division of Accounts and Reports, Dept. of Administration (Attachment 5).

Senator Lynn moved, Senator Vratil seconded, that **SB 79** be passed. The motion was adopted.

The Chairman turned the committee's attention to **SB 83 -- Judges and justices; employment of retirants.**

Jason Thompson, Staff Revisor, reviewed the bill.

The Chairman recognized Helen Pedigo, Special Counsel to the Chief Justice of the Kansas Supreme Court, to respond to questions previously raised by the committee. Ms. Pedigo stated that **SB 83** creates no problems regarding KPERS and is in compliance with the requirements of the Federal Internal Revenue Code (Attachment 6).

Senator Vratil moved, Senator Haley seconded, that **SB 83** be passed. The motion was adopted.

The Chairman turned the committee's attention to **SB 96 -- Business entities; resident agents; articles of incorporation and certificates of good standing.**

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson also reminded the committee that the Secretary of State had requested the effective date of **SB 96** be delayed until July 1, 2012.

Senator Vratil raised concerns with the provisions of **SB 96** relating to certificates of good standing and the enforceability of the bill.

Senator Vratil moved, Senator Kelly seconded, that **SB 96** be tabled. The motion was adopted.

The Chairman turned the committee's attention to **SB 104 -- Kansas tort claims act; charitable health care providers.**

Jason Thompson, Staff Revisor, reviewed the bill.

Senator Haley moved, Senator King seconded, that **SB 104** be passed. The motion was adopted.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for February 22, 2011.