

Approved: August 25, 2011  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 12:05 P.M. on March 21, 2011, in Room 548-S of the Capitol.

All members were present at the afternoon session, except Senators Donovan, Haley, Kelly, Schodorf, Umbarger and Vratil who were 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  
Jill Wolters, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

### Conferees appearing before the committee:

Ed Klumpp, Kansas Judicial Council, Criminal Law Advisory Committee  
Jennifer Roth  
Patrick Vogelsberg, Kansas County and District Attorneys Association

### Others attending:

See attached list.

The Chairman expressed his thanks to Whitney Damron for providing lunch and to Jennifer Roth for providing the cookies.

The Chairman noted that a quorum of the members was not yet present, but he intended to proceed with the hearings on the bills on the agenda.

The Chairman opened the hearings on **HB 2339 -- Criminal code trailer bill.**

Jill Wolters, Office of Revisor of Statutes, reviewed the bill (Attachment 1). She explained the bill would: Reconcile conflicts between 2010 HB 2668 and other bills passed during the 2010 Legislative Session; fix errors and omissions in 2010 HB 2668; and update cross references to statutes in Chapter 21 of the Kansas Statutes Annotated. The bill would make no substantive changes.

No testimony in support of, or opposition to, **HB 2339** was submitted.

The Chairman called the committee's attention to the fiscal note for **HB 2339**.

The Chairman closed the hearings on **HB 2339**.

The Chairman opened the hearings on **HB 2318 -- Amendments to the recodified criminal controlled substances provisions and the drug-sentencing grid.**

The Chairman opened the hearings on **HB 2318**.

Jason Thompson, Staff Revisor, reviewed the bill (Attachment 2).

Ed Klumpp testified in support of **HB 2318** (Attachment 3). He stated the bill would make several changes to the statutes governing controlled substances, including the adoption of a drug-sentencing grid with five levels. The grid would add a new severity level 2 with penalties falling between the current first and second levels of the drug grid.

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Jennifer Roth, appearing as an individual, testified in support of HB 2318 (Attachment 4), but with concerns with the following provisions: Treating possession of precursors and paraphernalia as attempted manufacture, distribution or possession; charging juveniles with distribution or intent to distribute; continued use of the 1,000 feet of a school language; exclusion of defenses; and the threshold amount of drugs in the lower severity levels of the drug grid. Ms. Roth submitted language for a suggested amendment to K.S.A. 22-4902 (Attachment 5).

Written testimony in support of **HB 2318** was submitted by Patrick Vogelsberg, Kansas County and District Attorneys Association (Attachment 6).

No testimony in opposition to **HB 2318** was submitted.

The Chairman called the committee's attention to the fiscal note for **HB 2318**.

The Chairman closed the hearings on **HB 2318**.

### **Committee Action:**

The Chairman announced that the committee still lacked a quorum, but it was his intent to convene at a later time this afternoon or evening in order for the committee to take action on bills previously heard. Notice of the time and location of the meeting will be announced from the floor of the Senate and will be emailed to everyone who is on the committee agenda email list.

Meeting recessed at 1:15 P.M. The committee will reconvene on the call of the Chairman.

## **Evening Session**

The Chairman reconvened the meeting at 5:35 P.M. on March 21, 2011, in Room 346-S of the Capitol.

All members were present at the evening session, 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  
Jason Long, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Others attending:

See attached list.

### **Committee Action:**

The Chairman called the committee's attention to **HB 2339 -- Criminal code trailer bill**.

**Senator Vratil moved, Senator Kelly seconded, that HB 2339 be passed. The motion was adopted.**

The Chairman called the committee's attention to **HB 2318 -- Amendments to the recodified criminal controlled substances provisions and the drug-sentencing grid.**

Senator Bruce proposed the following conceptual amendments to **HB 2318**:

- On page 6, in line 20, change the severity level 1 to severity level 2

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- Treat cocaine in the same manner as methamphetamine and heroine (Page 8, lines 22-26 and page 9, line 25)
- In regard to “crack”, sales in a quantity of 1/10 of gram in weight (Page 8)
- Treat “crack” as a quantity
- In the case of precursors and paraphernalia, change severity level 1 to severity level 3 (Page 12)

After a brief discussion relating to the number of proposed amendments and whether or not there was time to consider the consequences of the amendments, Senator Bruce stated he was willing to delay any action until the 2012 Legislative session.

Senator Vratil moved, Senator Kelly seconded, that no action be taken on **HB 2318** during the 2011 session. The motion was adopted.

The Chairman called the committee's attention to **HB 2035 -- Amending statutes regulating late-term and partial birth abortion.**

Senator Pilcher-Cook distributed copies of an amendment, which would redefine the term “abortion” so that it includes the use of a drug or substance to terminate a pregnancy (Attachment 7).

Senator Pilcher-Cook moved, Senator Lynn seconded, that the amendment be adopted.

Senator Haley asked, “Does this expand the current definition? Does the language currently in the bill restrict the inclusion of RU-486?”

Senator Pilcher-Cook responded, “This amendment would clarify that RU-486 is included within the definition.”

Senator Haley asked, “Has there been a failure to report non-surgical methods to terminate a pregnancy as currently defined?”

Senator Pilcher-Cook responded, “No, this is a clarification.”

Senator Haley asked, “What is the source of the proposed language?”

Senator Pilcher-Cook responded, “It is from the National Right to Life. The language is used in other states’ abortion laws and it is used in **HB 2218.**”

Senator Kelly asked, “Is it illegal for a pharmacist to prescribe RU-486?”

Senator Pilcher-Cook responded, “It is not.”

Senator Kelly expressed concern for the unintended consequences of the amendment.

Senator Haley asked, “Why is the phrase “to preserve life or health of child after live birth” in the definition?”

Senator Pilcher-Cook responded, “It ensures that a child born alive is not left to die.”

Senator Haley asked, “Would this not be addressed in the homicide statutes?”

No response given.

Senator Haley asked, “What is the age of an “unborn child” as that term is used in the definition

of abortion?”

Senator Pilcher-Cook responded, “Any living organism in utero.”

Senator Haley asked, “At what age is an organism in utero an unborn child?”

Senator Pilcher-Cook responded, “From the moment of conception.”

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Senator Kelly made a substitute motion, Senator Vratil seconded, that the amendment be rejected. The motion was adopted.

Senator Vratil moved, Senator Schodorf seconded, to change the effective date of the bill from publication in the statute book to publication in the Kansas register. The motion was adopted.

Senator Kelly distributed copies of an amendment, which provides if the court orders an evaluation of a minor prior to the judicial by-pass proceeding, the evaluation would be conducted by a psychiatrist (Attachment 8).

Senator Kelly moved, Senator Vratil seconded, that the amendment be adopted.

Senator Bruce made a substitute motion, Senator Lynn seconded, that a psychiatrist, licensed psychologist or licensed clinical social worker be required to conduct the evaluation. The motion was adopted.

Senator Pilcher-Cook moved, Senator King seconded, that **HB 2035** be passed as amended. The motion was adopted.

Senator Umbarger voted yes on the motion and asked that his vote be so recorded.

The Chairman called the committee's attention to **HB 2218 -- Abortion regulation based on capacity of unborn child to feel pain.**

Senator Pilcher-Cook distributed copies of an amendment, which would insert wording that was inadvertently omitted, as follows: On page 1, in line 10, following “fertilization” by inserting “, the unborn child reacts to touch. By 20 weeks after fertilization”; also on page 2, line 40, strike “would” and insert “she intends”; also on page 3, line 23, strike “would” and insert “she intends” (Attachment 9).

Senator Haley asked, “Is the language from a medical source?”

Senator Pilcher-Cook responded, “There is scientific evidence supporting the claim that an unborn child responds to pain by 20 weeks. Testimony to the contrary was based on old literature.”

Senator Haley asked, “Is the term “unborn child used in our abortion statutes or other statutes?”

Senator Pilcher-Cook responded, “Yes, in the woman’s right to know act.”

Senator Haley asked, “Is gestational age used in that act?”

Senator Pilcher-Cook responded, “No.”

Senator Kelly offered a substitute motion, Senator Vratil seconded, to reject the amendment.

Senator Pilcher-Cook stated that we should give respect to the latest scientific literature.

Senator Kelly stated that relying on Dr. Bollier’s testimony, a fetus does not have capacity to feel pain before 26 weeks gestational age.

The substitute motion failed on a 5-5 vote.

Senators Bruce, King, Lynn, Pilcher-Cook and Umbarger voted no on the motion and asked that their votes be so recorded.

Senator Pilcher-Cook renewed her motion to amend, Senator Lynn seconded.

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Senator Haley offered a substitute motion, Senator Schodorf seconded, to table **HB 2218**. The motion failed.

Senator Pilcher-Cook renewed her motion to amend, Senator Lynn seconded. The motion failed.

Senators Bruce, King, Lynn and Pilcher-Cook voted yes on the motion and asked that their votes be so recorded.

Senator Kelly distributed copies of an amendment (Attachment 10), which would delete section 1; change the term “unborn child” to “fetus” throughout the bill; change “22” to “26” when referencing the age of the fetus; and require that the fetus has a functioning cerebral cortex in order to be pain capable.

Senator Kelly moved, Senator Vratil seconded, that the amendment be adopted. The motion failed.

Senators Bruce, King, Lynn, Owens, Pilcher-Cook and Umbarger voted no on the motion and asked that their votes be so recorded.

Senator King moved, Senator Lynn seconded, that **HB 2218** be passed.

Senator Haley offered a substitute motion, Senator Kelly seconded, to table **HB 2218**. The motion failed.

Senator King renewed his motion, Senator Lynn seconded. The motion was adopted.

The Chairman called the committee's attention to **HB 2312 -- Regulated scrap metal; licensing scrap metal dealers; unlawful acts; criminal penalties.**

Senator Vratil moved, Senator Bruce seconded, that no action be taken on **HB 2312** this session. The motion was adopted.

Meeting adjourned at 7:55 P.M. No further meetings have been scheduled.