

Approved: June 20, 2012  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 a.m. on March 7, 2012, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes  
Katherine McBride, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Bob Allison-Gallimore, Kansas Legislative Research Department  
Theresa Kiernan, Committee Assistant

Conferees Appearing before the Committee:

Jennifer Roth, Kansas Assn. of Criminal Defense Lawyers  
Callie Jill Denton, Director of Public Policy, Kansas Assn. for Justice  
Eric Stafford, The Kansas Chamber  
Randy Stookey  
Daniel Murray, State Director, National Federation of Independent Business  
Marc Bennett, Deputy D.A., 18<sup>th</sup> Judicial District  
Tim Madden, Senior Legal Counsel to Secretary of Corrections  
Marc Goodman, Lyon County Attorney  
Steve Karrer, Asst. Attorney General

Others in Attendance:

See Attached List

The Chairman opened the hearings on **Substitute for HB 2106—Relating to trespass and liability; exceptions.**

Mr. Thompson reviewed the bill. He stated the bill would provide that a possessor of real property, including an owner, lessee, or other occupant, or an agent of such person or entity, does not owe a duty of care to trespassers, except to refrain from willfully or wantonly injuring the trespasser. Further, possessors would be allowed to use justifiable force to repel a trespasser who has entered the land or a building with the intent to commit a crime. The bill would provide, however, that a possessor of real property could be liable for physical injury or death to a trespasser if under certain conditions. The bill would clarify that current law limiting the liability of landowners who make land and water areas available to the public for recreational purposes would not be construed as granting an easement over the land by the owner or by adverse possession.

Eric Stafford testified in support of **Substitute for HB 2106.** He stated the bill would codify common law and maintain the law as it stands today in respect to liability of property owners to trespassers. (Attachment 1).

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In response to questions raised by members of the Committee, Mr. Stafford stated he did not know: How uninvited law enforcement officers or personnel who are present legally on property would be treated if the bill was enacted; or how much of the Second or Third Restatement of Torts had been adopted in Kansas. He stated the bill would preempt the adoption of provisions of the Restatement which conflict with the provisions in the bill.

Daniel Murray testified in support of **Substitute for HB 2106**. He stated the frequency and high cost of litigation in the current civil-justice system is a matter of growing concern to small business. Liability reforms as proposed in the bill would inject a measure of fairness into the legal system. (Attachment 2).

Senator Vratil raised concern with the language on page 1, in lines 12 and 13. He asked how it would be proved that a trespasser entered the land or building with the intent to commit a crime. He asked why the language is necessary if it is a crime to trespass?

In response to questions by the Chairman, Mr. Murray said he would support clarification of the definition of trespasser in relation to law enforcement officers and code and building inspectors.

In response to a question by Senator Kelly, Mr. Thompson noted that the criminal code (K.S.A. 21-5220) defines justifiable force.

Written testimony in support of **HB 2106** was submitted by Luke Bell, Dustin J. Denning and Randy Stookey. (Attachments 3, 4 and 5).

Callie Jill Denton testified in opposition to **Substitute for HB 2106**. She stated the bill would conflict with well-established case law and would cause confusion with the public and the courts. (Attachment 6).

Senator Vratil noted that the word “child” is not defined in the bill. He asked how it would be proved that an injury had occurred because a child's youth prevented the child from discovering “the condition or realize the risk involved in intermeddling with the condition or of coming within the area made dangerous by it.”?

Written neutral testimony on **HB 2106** was submitted by Ed Klumpp. (Attachment 7).

The Chairman closed the hearings on **Substitute for HB 2106**.

The Chairman opened the hearings on **HB 2055–Amending reporting requirements of the district attorney to the secretary of corrections.**

Mr. Thompson reviewed the bill. He stated the bill would remove the requirement that, upon sentencing, courts forward county and district attorney reports to law enforcement officer who has the offender in custody. The bill also would clarify that for felony convictions with prison sentences, the information a county or district attorney must provide to the Secretary of Corrections is limited to any special facts and circumstances that cannot be obtained from records already provided to the Secretary.

Marc Bennett testified in support of **HB 2055**. He stated the bill should streamline the production of

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information, eliminate redundancies across three current statutes by removing unnecessary administrative burdens, while still allowing a mechanism for special information to flow to the KDOC as needed. (Attachment 8).

Tim Madden testified in support of **HB 2055**. He stated the bill would serve the public safety interests of both the department and prosecuting attorneys. There is no need to require prosecuting attorneys to submit information in their report that is also set out in other documents routinely provided to the department. (Attachment 9).

The Chairman closed the hearings on **HB 2055**.

The Chairman opened the hearings on **HB 2468–Requiring defense attorneys to produce reports and allow inspection prior to criminal trial.**

Mr. Thompson reviewed the bill. He stated the bill would require a defendant who seeks discovery to provide to the prosecutor, within 30 days of trial, a summary or written report regarding any intended expert witness.

In response to a question by Senator Vratil, Mr. Thompson stated if a defendant does not seek discovery or inspection under subsection (a)(2), the defendant would not have to comply with subsection (c)(1) and (2).

Marc Goodman testified in support of **HB 2468**. He stated the bill would: Increase prosecutor's ability to filter cases set for trial; eliminate those cases where it establishes innocence; eliminate the ridiculous concept of trial by ambush; and increase efficiency and could lower costs. (Attachment 10).

Steve Karrer testified in support of **HB 2468**. He stated the bill would ensure that all parties (attorneys, judges, juries and witnesses) are effectively prepared for trial and would remove the element of surprise during trial. (Attachment 11).

In response to concerns raised by Senator King, Mr. Karrer stated the defense is not bound by the speedy trial limitations and that not all discovery is reciprocal.

Written testimony in support of **HB 2468** was submitted by Melissa Johnson, Michael Gayoso, Jr. and Chris McMullin. (Attachments 12, 13 and 14)

Written testimony in opposition to **HB 2468** was submitted by Jennifer Roth. (Attachment 15).

The Chairman closed the hearings on **HB 2468**.

The next meeting is scheduled for March 8, 2012.

The meeting was adjourned at 10:30 a.m.