

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on February 24, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Donovan (E)
Senator O'Connor (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Chris Biggs, Geary County Attorney and Legislative Chair of Kansas County and District Attorneys Association
Donna Heintze, mother of murder victim (written only)
Michelle Brown, Public Defender 8th Judicial District
Steve Obermeier, Assistant District Attorney, 10th Judicial District
Kevin Graham, Assistant Attorney General
Roger Werholtz, Secretary of Corrections
Ed Collister, Kansas Bar Association
Martha Coffman, Kansas Bar Association (written only)

Others attending: see attached list

SB 206 - One year time limitation on writs of habeas corpus

Chairman Vratil opened the hearing on **SB 206**. Conferee Biggs testified on behalf of the Kansas County and District Attorneys Association (KCDAA) in support of the proposed legislation. He encouraged passage of **SB 206** as it promotes a victim interests, finality in criminal proceedings, and is fiscally responsible. He stated that it also provides for the inmate with a truly meritorious claim while at the same time it provides a procedure to succinctly eliminate those petitions which are technical, mundane, and ridiculous. (Attachment 1)

Written testimony was submitted by Donna Heintze, mother of the victim. (Attachment 2)

Conferee Brown presented testimony in favor of **SB 206** which proposes a time limit for filing a 60-1507 civil action. She explained that this proposed bill proposes that a defendant has a time limit of one year after all direct appeals are finished to file a claim under 60-1507 unless manifest injustice requires an extension past the one year. Ms. Brown asked the Committee for favorable consideration of **SB 206**. (Attachment 3)

Committee discussion and questions followed.

Steven Obermeier testified in support of **SB 206**, and said the current law gives inmates more rights than law-abiding citizens who must operate under statutes of limitation. He gave some examples of past cases

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where inmates have waited as much as 26 years before filing a writ claiming they were denied effective assistance of counsel. He explained that inmates or parolees may raise the issue of ineffective assistance of counsel "at any time". Mr. Obermeier encouraged the Committee to recommend passage of **SB 206**. (Attachment 4)

Assistant Attorney General Kevin Graham appeared before the Committee to offer support for **SB 206**. He stated that the proposed legislation is designed to promote the State's legitimate interest in the finality of convictions, and in general address the problem of unduly delayed petitions filed by state prisoners seeking redress years after their convictions have been affirmed. He added that the legislation promotes a simplified approach to state collateral review by discouraging piecemeal litigation. He said the Attorney General's Office suggested that the bill be amended in subsection (a) of K.S.A. 60-1507 to read: "A prisoner . . . may ~~at any time~~, pursuant to the time limitations imposed at paragraph (f), move the court which imposed the sentence to vacate, set aside or correct the sentence." (Attachment 5)

The Chair asked Mr. Graham to submit a balloon amendment to **SB 206** for consideration by the Committee when they work this bill.

Roger Werholtz, Secretary of Corrections, submitted written testimony in support of **SB 206**. He said the Department of Corrections recommends that the bill be amended by striking the phrase "at any time" at line 21 on page 1, as this language conflicts with the time limit established in subsection (f). (Attachment 6)

Conferee Collister, representing the Kansas Bar Association, presented testimony in opposition to the bill as it would send cases back to the district courts which would create problems and cause more court work. He said that it violates the Kansas Constitution, and the time limitation concept is a bad concept. Mr. Collister included with his written testimony the testimony of John Tillotson, past KBA President, who testified at a previous hearing of April 24, 2000. (Attachment 7)

Written testimony was submitted by Martha J. Coffman, Kansas Bar Association, in opposition to **SB 206**. (Attachment 8)

Following Committee discussion and questions, Chairman Vratil closed the hearing on **SB 206**.

Final action on:

SB 123 - Drug convictions; possession is a level D4 classification; mandatory drug treatment; border boxes on D4 replaced with probation boxes

Chairman Vratil reopened the floor for discussion and to continue working **SB 123**. He reviewed briefly the Committee's action of adopting the amendments proposed by the Kansas Sentencing Commission at the previous meeting. He called the Committee's attention to amendments requested by the Kansas Department of Corrections (KDOC) that were distributed at the previous meeting for the Committee's review and consideration. He clarified the three proposed amendments by the KDOC. (Attachment 9)

Senator Goodwin moved to accept the three amendments as proposed by the Department of Corrections, seconded by Senator Haley, and the motion carried.

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Senator Oleen made a motion to pass the bill favorably as amended, seconded by Senator Goodwin. The Chair called for discussion, and Senator Schmidt offered that **SB 189** is another option other than passing the amended bill. Chairman Vratil stated that **SB 189** will not be worked unless **SB 123** is not passed out favorably with amendments. Senator Goodwin commented that Judge Johnson, Chairman of the Sentencing Commission, stated if treatment was not funded then the Kansas Sentencing Commission will asked that this bill be withdrawn. Discussion continued on the bill.

Chairman Vratil called for a vote on the motion to pass out favorably as amended. The motion carried. Senators Schmidt, Umbarger, and Pugh requested to be recorded as voting no on **SB 123**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 25, 2003.