

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35a.m. on Wednesday, February 11, 2004, in Room 123-S of the Capitol.

All members were present except:  
Senator David Haley (E)

Committee staff present:  
Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:  
Randy Hearrell, Kansas Judicial Council  
Senator Stephen Morris  
Kevin O'Connor, Sedgwick County District Attorney's Office  
Donna Schneweis, Amnesty International  
Chris Clark, Legislative Division of Post Audit

Others attending: See attached list.

**SB 421 - Eminent domain; filing the appraisers' report within 45 days after entry of order, current law 20 days**

Chairman Vratil opened the hearing on **SB 421**. The Chair explained the proposed legislation which he had drafted and introduced. He said in an eminent domain action, current law requires the court appointed appraiser's report to be submitted within 20 days after the appraiser is appointed. He stated that in every case he had been involved in, or know of, it was routine to get an extension. The extension requires the attorney to file a motion, and get the judge to sign an order extending the deadline for the report. Senator Vratil said this bill changes the 20 days to 45 days. It was an attempt to be more realistic and efficient in processing eminent domain.

No other conferees appeared on **SB 421**. During Committee discussion, Senator Donovan stated that this was a narrowly defined bill, and suggested that it be put on the Consent Calendar. Chairman Vratil closed the hearing on **SB 421**.

Senator Donovan made a motion to pass SB 421 favorably, and have it placed on the Consent Calendar. The motion was seconded by Senator Goodwin, and the motion carried.

**SB 422 - Capital murder, if sentence of death not imposed, imprisonment for life without the possibility of parole**

Chairman Vratil opened the hearing on **SB 422**. The Chairman explained the bill involved capital murder, and if a death sentence was not imposed, then imprisonment for life without the possibility of parole was an alternative.

Randy Hearrell, Kansas Judicial Council, testified in support of **SB 422**. Mr. Hearrell said the Legislature requested the Judicial Council to study costs in death penalty cases last spring. The Council appointed a Committee to conduct the study. A list of the members was attached to the written testimony. The Council completed the study. One recommendation was that if a defendant is found guilty of capital murder and the death penalty is not imposed, then the alternative sentence of life without the possibility of parole could be imposed. He revealed that in the Legislative Post Audit's report, it was recognized that such a change could potentially help contain costs in death penalty cases. (Attachment 1)

Mr. Hearrell shared that of the 38 states that have capital punishment, 35 states have life without parole. He added that of the 12 states that do not have a death penalty, only Alaska does not have life without parole. He explained that containing death penalty costs associated with trials is accomplished because prosecutors were less like to seek the death penalty if a plea would result in a sentence of life without possibility of parole. It eliminated both trial and appeal costs. Mr. Hearrell pointed out that even if

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35a.m. on Wednesday, February 11, 2004, in Room 123-S of the Capitol.

prosecutors continue to seek the death penalty, there is some evidence that jurors are less likely to impose the death penalty if life without parole is an option.

In conclusion, Mr. Hearrell stated that currently in Kansas if a defendant is convicted of capital murder and the jury decides not to impose the death penalty, the defendant is sentenced by the judge to either life in prison with parole eligibility in 25 years or to life in prison with parole eligibility in 50 years. He explained in practice, every defendant in Kansas that has thus far been convicted of capital murder but spared the death penalty has been sentenced to the "hard-50" or its predecessor the "hard 40". As a result, Mr. Hearrell stated the default sentence is in practical effect already life without the possibility of parole. However, he said because even the "hard 50" sentence is not a "true" life sentence, and further is not automatically imposed, jurors are left with uncertainty as to when the defendant might become eligible for parole. He concluded that establishing life without parole as the alternative sentence should end such uncertainty.

Committee questions and discussion followed regarding who drafted the proposed legislation, new jury instructions, and the number of capital convictions in Kansas since the reinstatement of the death penalty. Senator Goodwin inquired regarding Section 2, relating to when a juvenile is tried as an adult and given a sentence of life without parole in lieu of capital punishment, if that meant the juvenile stayed in the Kansas prison system until the juvenile was no longer alive. Mr. Hearrell responded affirmatively, and that would be his interpretation. He did not recall discussion on the subject during the study committee's deliberations.

Senator O'Connor asked about a bill passed during the last legislative session regarding terminally ill or close to death inmates who are released to go home to die, would Section (b) have prohibited that from occurring? Mr. Hearrell replied that he had not thought about that situation, but would check on that particular issue and report back to the Committee his findings.

Senator Stephen Morris, who served on the Judicial Council study committee on this issue, testified as a proponent on **SB 422**. He stated that currently if a jury does not return a verdict of death, the penalty is decided by the trial judge. He felt that the change would give juries a better "feeling" for their deliberations with an option on the pending phase of the trial. (Attachment 2)

Committee questions and discussion followed. Senator Donovan asked if the proposed procedure was adopted, would it do away with the "hard 50"? Senator Morris replied it would not. Chairman Vratil explained that the "hard 50" was still in the bill, and that it would be another available alternative. Senator Morris stated that it was the intent of the study committee to give juries some flexibility.

Senator Oleen asked if there had been a recent Supreme Court ruling with regard to juveniles. She suggested that the Committee study the juvenile questions further when looking at the classification of offenders.

Chairman Vratil requested the Revisor, Jill Wolters. To explain how the bill was drafted. Ms. Wolters said it was drafted to provide the option of life without the possibility of parole if a person is sentenced under capital murder and not sentenced to death. She stated there would no longer be a "hard 50" sentence. She explained that she included Sub Section 2 because she had not received any direction regarding juveniles. Currently a juvenile cannot be sentenced to death. They can receive the "hard 50" or "hard 40" depending on when they committed a crime. The Legislature should determine whether or not it wants a juvenile to get life without the possibility of parole.

Kevin O'Connor, Sedgwick County District Attorney's Office, testified in support of **SB 422**. Mr. O'Connor apologized for not providing written testimony, but stated that it would be submitted later. He said that in his jurisdiction more people are sent to death row than in any other jurisdiction in Kansas. Mr. O'Connor stated that the State of Kansas had written a good, conservative death penalty law, and he had no opposition to having a jury decide the sentencing issue. He disclosed that the bill does not have anything to do with mental retardation issues. He spoke briefly about the issue of accepting a plea, and he wanted to inform the Committee that it would be unethical for a prosecutor to use the death penalty as a negotiating tool. He stated that decisions relative to this issue need to be made by a jury. Mr. O'Connor

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35a.m. on Wednesday, February 11, 2004, in Room 123-S of the Capitol.

commented that he would furnish copies of all jury instructions for the Committee.

Donna Schneweis, Amnesty International, spoke in opposition to **SB 422**. She explained that Amnesty International took no position on the majority of the bill, but did oppose Section 2 relating to juvenile cases, which provides for the sentence of life imprisonment without parole for those juveniles adjudicated as adults when charged with capital murder. She said in Kansas the law does not allow certain behaviors to be legal until the age of 18, i.e. marry without guardian consent, serve on a jury, possess tobacco or cigarettes, or vote. She urged the Committee to remove Section 2 of **SB 422**, and juvenile offenders not be subjected to life imprisonment without parole. (Attachment 3)

Chris Clark, Legislative Division of Post Audit, submitted written testimony as a neutral conferee. In the written testimony he listed two ways which potentially could reduce costs when having the option of life without parole: (1) Prosecutors might not be inclined to seek the death penalty in as many cases if they know a conviction will result in the defendant being locked away forever. This would avoid the extra expense of death penalty trials; and (2) Jurors might be more likely to impose a life sentence rather than death, which could reduce appeal costs. Non-death sentences have fewer issues on appeal, which would save appellate costs. (Attachment 4)

The Chair closed the hearing on **SB 422**.

Chairman Vratil announced that there was one bill introduction. Senator Betts asked for introduction of a conceptual bill relating to racial profiling and creation of a misdemeanor violation, civil cause for action, and requirements of law enforcement agencies. Senator O'Connor made a motion to have the conceptual bill drafted and introduced, seconded by Senator Donovan, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 12, 2004.