

MINUTES

SPECIAL COMMITTEE ON JUDICIARY - B

September 12 and 13, 1977

Room 527 - State House

Members Present

Representative Dick Brewster, Chairman
Senator Ron Hein
Senator Joe Norvell
Senator Jim Parrish
Representative Ben Foster
Representative Mike Glover
Representative Fred Lorentz
Representative Phil Martin
Representative Kent Roth

Staff Present

Art Griggs, Revisor of Statutes Office
Paul Purcell, Kansas Legislative Research Department

Others Present

Senator Elwaine Pomeroy, Chairman of the Special Committee on Judiciary - A

September 12, 1977

Morning Session

Chairman Brewster called the meeting to order at 9:00 a.m. and directed the Committee's attention to Proposal No. 43.

Proposal No. 43 - "Child Grabbing" (or Child Custody)

Representative Foster stated that if child grabbing were made a felony, an individual convicted of child grabbing would be prohibited from getting a job as a law enforcement officer and that taking one's own child should not be a felony.

Staff reviewed the major provisions of the Uniform Child Custody Jurisdiction Act for the Committee. Representative Foster made a motion to have staff draft the uniform act as part of the Kansas statutes for review at the next meeting. The motion was seconded by Senator Hein and it carried.

Representative Roth stated that Wyoming had passed a law during the last session dealing with professional child grabbers. After a brief adjournment, copies of this statute were distributed to Committee members.

Ms. Jan Price, representing the American Civil Liberties Union, said that her organization was concerned about Social and Rehabilitation Services taking children from foster homes contrary to court order. She indicated that specific information could be provided the Committee about this matter.

Senator Parrish made a motion to have staff draft a proposal which would expand the statute prohibiting interference with parental custody by creating the crime of aggravated interference with parental custody which would include a second or subsequent offense, a parent or employee of a parent, child grabbing for hire and cover use of weapons and force. This crime would be designated a Class E felony. Representative Roth seconded the motion and it carried.

Proposal No. 40 - Determinate Sentencing

Two drafts were distributed to Committee members. Staff noted that the first draft had been amended in accordance with Committee instructions. Chairman Brewster stated that he wanted to be sure that an inmate has a definite date that he will be able to see the Adult Authority and gave drafting instructions which would assure this.

Afternoon Session

Proposal No. 38 - Lien Laws

Mr. Richard Schodorf, Director of the Division of Consumer Fraud and Economic Crime of the Office of the District Attorney of the Eighteenth Judicial District, discussed problems with the lien laws that his office is aware of. He said that there are about 30 complaints each year by homeowners who have contracted for home improvements, and pay the general contractor who does not pay the subcontractors. Consequently, the subcontractors file a lien on the home and frequently the homeowner must pay for materials or services a second time.

Ms. Linda Sjogren, Wichita, said she and her husband had problems when they were having a new house built. Upon the advice of the lending institution, the contractor was asked to sign affidavits that all suppliers and subcontractors had been paid, which he did. Payments totaling \$22,000.00 were made to the contractor and then she and her husband received notice that liens were to be filed against the property in the amount of \$16,936.00. Although the contractor had signed lien waivers, he had never made a token payment to the suppliers and subcontractors. She said that she and her husband may ultimately have to pay twice the amount they contracted to pay.

Mr. Dan Slater, Wichita, related his problems with regard to contracting for a home to be built with a V.A. loan. The house was to have been completed before his apartment lease expired but was not finished in time. The builder suggested moving into the house even though it was not complete and shortly thereafter the contractor disappeared. Mr. Slater stated that about \$4,800.00 worth of liens were filed and the bank has initiated foreclosure. He is now negotiating with the bank and the lienholders so that he will be able to remain in the house, although he said that he is going to lose a large amount of money. He said that no lien waivers had been requested since the bank was involved and it was a V.A. loan.

Ms. Jan Pinaire, Wichita, told the Committee that her family had contracted for an addition to their home, which included the removal of the central air conditioning unit and its replacement by another unit to accommodate the additional space. The contractor removed and sold the unit and then left town before the new unit had been installed. Additionally, a number of supplier liens were immediately filed. She said that not only will the cost of the home improvement far exceed what she had contracted to pay but also there was no air conditioning or heating system in her home. She said that the law is unfair because a supplier always knows that he can always get his money by foreclosing a lien and so a supplier generally makes no inquiry about the creditworthiness of a contractor before supplying large amounts of material on credit.

Chairman Brewster asked which bill Mr. Schodorf supported and Mr. Schodorf said the District Attorney's Office supports House Bill No. 2485.

Representative Foster said that the legal question is which of two innocent parties is going to bear the cost. Mr. Schodorf said that it was not entirely correct to describe the supplier as innocent when an extension of credit is made without a check into the prospective debtor's creditworthiness. He said that the cost of requiring a bond would be directly passed on to the consumer. Chairman Brewster said that the Associated General Contractors is trying to get some data on this for the Committee.

Mr. Stanley Lind stated that the bonding concept sounds good but it will just not work and that the average contractor cannot get a bond. He suggested that requiring contractors to have a trust account might be a solution. He agreed that the idea of notice might be injected, but pointed out that the people who had lien waivers were still not protected when it came to the subcontractor.

Mr. Paul Lewis, representing the Kansas Bankers Association, stated that he will ask the Association to have one of its committees study the lien law problems. He suggested that the homeowner pay all subcontractors himself and the Chairman noted that most contractors would be opposed to this because it would allow the homeowner to see what the profit margin is.

Mr. Wilbur Levering, Merchants National Bank, Topeka, stated that House Bill Nos. 2413 and 2414 would require banks and lending institutions to check with the Register of Deeds everyday and that many additional problems would be created. He said that his bank finances a large number of feeding operations and that if the bank lends money for the purchase of cattle and the cattle are moved to a commercial feedlot and then the operator fails to pay the supplier for the feed, there is no way the supplier should be entitled to a lien on the cattle which would be prior to the bank's lien. He said the same result should apply in the case of crop liens where the bank financed purchase of the seed and perhaps equipment. The fertilizer supplier should not have a lien prior to the bank's.

Mr. Virgil Huseman, Kansas Livestock Association, pointed out that, under H.B. 2413, if a feedlot fell behind in payments to suppliers, the suppliers could place a lien on all of the cattle in the lot even though all of the farmers had been paying their bills.

It was moved by Representative Lorentz and seconded by Representative Foster that H.B. 2413 and 2414 receive a negative Committee report. The motion carried.

Proposal No. 40 - Determinate Sentencing

Chairman Brewster suggested that there may be a need for some legislation giving the court alternatives in lieu of committing an individual to the Secretary of Corrections, and then there would be enough flexibility that the people making decisions could decide what kind of programs they want to develop.

Senator Norvell said that there may be a need for a fulltime parole board.

September 13, 1977

Morning Session

Proposal No. 41 - Death With Dignity

Mr. Jerry Slaughter of the Kansas Medical Society introduced Dr. Jack Cooper, a neurosurgeon from Kansas City, to discuss the proposal on behalf of the Society. Dr. Cooper said that certifying death properly belonged to the medical profession and that some physicians come into contact with death more frequently than others and where death is seldom seen, an element of emotionalism is more apt to be present. He noted that the clergy has become more involved with and understanding of the problems in this area. Dr. Cooper said he operates under the theory that a patient should be brought back to a state of health if at all possible but that when medical technology has no hope of doing this and is merely altering the way death will occur then the responsibility becomes one of allowing the patient to suffer as little as possible. The Chairman asked if there is a need for legislation in this area and Dr. Cooper replied that a few years ago he might have felt it was needed but at the present time he believes it is a professional question.

Proposal No. 40 - Determinate Sentencing

The Chairman distributed copies of a survey which had been conducted by Judge Michael Barbara. The Chairman stated he was surprised that not more disparity existed.

Senator Hein suggested that there should be some kind of equalizing factor applicable to persons incarcerated. The Chairman noted that the Adult Authority would be the equalizing factor. The Chairman called attention to Judge Bullock's paper and noted it discusses disparity and uncertainties and that these things trouble everyone involved. The Chairman noted, however, that if the bills are passed, the Department can modify existing rules and regulations regarding good time and the inmate would have to serve a minimum sentence less any earned good time and that there would still be some sentencing disparity.

The Chairman noted that sometime ago the Committee had discussed the difference in classification of aggravated sodomy and rape and that instead of dropping aggravated sodomy the draft would raise rape to a Class B felony.

With respect to draft number 1601 which covers aircraft piracy, Senator Parrish stated he thought it should be a Class A felony if any bodily harm results. Senator Pomeroy felt that kidnapping would always be chargeable. Senator Norveli moved that the draft be changed so that the classification in section 2 be a Class B felony. Representative Roth seconded the motion and it carried.

The Chairman reminded members that there had been discussion about the practice in some counties of the use of restitution by the court as a condition of probation and noted that K.S.A. 1976 Supp. 21-4610 authorizes this.

Afternoon Session

Proposal No. 40 (continued)

The Chairman noted that K.R.D.C. reports and pre-sentence reports are not available to a defendant and he felt that they should be. Representative Martin stated that sometimes psychiatric reports and medical reports should not be available because they can have a detrimental effect. The Chairman suggested that a provision could be drafted which would allow the defendant to have access to the reports unless the court felt it would not be in the person's best interest.

Senator Hein stated there had been testimony during the last session about problems with consecutive and concurrent sentences. Staff said there was a bill which would clarify the matter.

Senator Parrish asked if anything had been done about good time for those serving life sentences. The Chairman suggested that draft number 1579 would be an appropriate place to deal with this issue.

It was suggested by Senator Parrish that the 15 years should be increased to 16 and that then one and one-half years good time could be allowed. It was the consensus that this should be done.

Senator Hein recommended that on theft charges the amount be raised from the present \$50.00. Representative Glover moved that the amount be raised to \$100.00. Senator Norvell seconded the motion and it carried. Representative Lorentz asked that the record show he opposed the motion.

The meeting was adjourned at 4:00 p.m.

Prepared by Paul Purcell

Approved by Committee on:

November 18, 1977
(Date)