

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on February 7, 1979.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 8, 1979.

These minutes of the meeting held on February 6, 1979 were considered, corrected and approved.

Joseph J. Hoagland

Chairman

The conferees appearing before the Committee were:

Chairman Hoagland introduced Rep. Gillmore, Chairman of the Family Law Sub-Committee to report on HB 2068. (See Attachment # 1). After some discussion, Rep. Frey moved to amend Section 6, conceptually, "so that either party could be granted the residence." It was seconded by Rep. Brewster. Motion Passed. Rep. Brewster then moved that in Section 8, Line 107, the word "shall" be changed to "may." After short discussion, Rep. Brewster withdrew his motion. Rep. Gillmore moved the committee adopt the sub-committee's report. Seconded by Rep. Matlack. Following several questions, a substitute motion was made by Rep. Crow to add the word "verified" in front of the word, "petitions" in Section 4. Seconded by Rep. Gillmore. Motion Passed. It was moved by Rep. Glover and Seconded by Rep. Gillmore to adopt the sub-committee report. Motion Passed. Rep. Miller made a motion and it was seconded by Rep. Matlack to pass HB 2068 favorably as amended. A substitute motion was made by Rep. Gillmore to allow the court to appoint counseling. Seconded by Rep. Brewster. Motion passed. It was moved by Rep. Matlack and Seconded by Rep. Miller to pass the bill favorably as amended. Motion Carried.

Rep. Gillmore moved the committee report HB 2177 favorably. Seconded by Rep. Sullivan. Motion carried.

HB 2174 was briefly discussed and then Rep. Brewster moved an amendment to the bill, by striking "house trailer" and changing to "mobile home." Seconded by Rep. Stites. Motion Passed. Rep. Glover made a motion that the committee pass HB 2174 favorably as amended. Seconded by Rep. Stites. Motion Passed.

Chairman Hoagland adjourned the committee at 4:30 p.m.

HOUSE BILL No. 2068

By Representative Wilkin

1-11

0016 AN ACT relating to ~~civil actions~~; concerning abuse of adults and
 0017 children by certain persons; providing remedies and proce-
 0018 dures therefor; authorizing orders with regard to possession of
 0019 the residence and personal property of the parties, temporary
 0020 support, child custody and visitation rights, attorneys' fees,
 0021 court costs and other relief that will bring about a cessation of
 0022 the abuse; ~~authorizing courts to require recognizances under~~
 0023 ~~certain circumstances~~.

domestic relations

concerning the defiance of certain re-
straining orders; amending K.S.A. 21-3721
and K.S.A. 1978 Supp. 20-302b and repealing
the existing sections.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. *Short Title.* ~~This act shall be known and may be~~
 0026 cited as the ~~protection from abuse~~ act.

Sections 1 to 11 of

relief from domestic abuse

0027 Sec. 2. *Definitions.* As used in this act:

0028 (a) "Abuse" means the occurrence of one or more of the
 0029 following acts between family or household members who reside
 0030 together, or who formerly resided together and both parties con-
 0031 tinue to have legal access to the residence:

0032 (1) Attempting to cause bodily injury, or intentionally or
 0033 recklessly causing bodily injury; or

threat

0034 (2) placing, by physical ~~means~~, another in fear of imminent
 0035 serious bodily injury; or

0036 (3) engaging in any of the following acts with a minor who is
 0037 not the spouse of the defendant:

0038 (A) The act of sexual intercourse;

0039 (B) any lewd fondling or touching of the person of either the
 0040 minor or the defendant, done or submitted to with the intent to
 0041 arouse or to satisfy the sexual desires of either the minor or the
 0042 defendant or both.

0043 (b) "Adult" means any person eighteen (18) years of age or
 0044 older;

0045 (c) "Family or household members" means spouses, persons

Atch. 1

0046 living as spouses, parents and children, or other persons related
0047 by consanguinity or affinity.

0048 Sec. 3. *Jurisdiction.* The district court shall have jurisdic-
0049 tion over all proceedings under this act. The plaintiff's right to
0050 relief under this act shall not be affected by his or her leaving the
0051 residence or household to avoid further abuse.

0052 Sec. 4. *Commencement of Proceeding.* A person may seek
0053 relief under this act for himself or herself, or any parent or adult
0054 household member may seek relief under this act on behalf of
0055 minor children by filing a petition with the court alleging abuse
0056 by the defendant.

0057 Sec. 5. *Hearings.* (a) Within ~~ten (10)~~ days of the filing of a
0058 petition under this act a hearing shall be held at which the
0059 plaintiff must prove the allegation of abuse by a preponderance
0060 of the evidence. The court shall advise the defendant of his or her
0061 right to be represented by counsel.

0062 (b) Prior to the hearing on the petition and upon a finding of
0063 good cause shown, the court on motion of a party shall enter such
0064 temporary orders as it deems necessary to protect the plaintiff or
0065 minor children from abuse. Temporary orders may issue in an ex
0066 parte proceeding. Immediate and present danger of abuse to the
0067 plaintiff or minor children shall constitute good cause for pur-
0068 poses of this section.

0069 (c) If a hearing under subsection (a) is continued, the court
0070 may make or extend such temporary orders under subsection (b)
0071 as it deems necessary.

0072 Sec. 6. *Relief.* (a) The court shall be empowered to grant any
0073 protection order or approve any consent agreement to bring about
0074 a cessation of abuse of the plaintiff or minor children, which may
0075 include, but are not limited to, one or more of the following:

0076 (1) Directing the defendant to refrain from abusing the plain-
0077 tiff or minor children;

0078 (2) granting possession to the plaintiff of the residence or
0079 household to the exclusion of the defendant;

0080 (3) requiring the defendant to provide suitable, alternate
0081 housing;

0082 (4) awarding temporary custody and establishing temporary

Verified Petition
Amendment Passed

A petition filed pursuant to this section may not be amended to seek a divorce or separate maintenance decree.

for domestic relief twenty-one (21)

Orders issued pursuant to this subsection shall expire twenty-one (21) days after the order was issued.

(d) An immediate appeal shall be allowed from any domestic relief order issued pursuant to this act. Such an appeal shall be considered forthwith by the appellate court.

Concept. Amendment - to the fact - "so that either party could be granted the residence."
Amended Passed

if the plaintiff is defendant's spouse

for his or her spouse and any minor children of the parties

0083 visitation rights with regard to minor children;
 0084 (5) ordering the sheriff to evict the defendant from the resi-
 0085 dence or household;
 0086 (6) ordering support payments by a party for the support of a
 0087 party's minor child or a party's spouse;
 0088 (7) awarding costs and attorneys' fees to either party; or
 0089 (8) making provision for the possession of personal property
 0090 of the parties.

0091 (b) Any protection order or approved consent agreement shall
 0092 be for a fixed period of time not to exceed ~~one year~~

ninety (90) days

0093 (c) The court may amend its order or agreement at any time
 0094 upon subsequent motion filed by either party.

0095 (d) No order or agreement under this act shall in any manner
 0096 affect title to any real property.

0097 *Sec. 7. Notification.* A copy of any order under this act shall
 0098 be issued to the plaintiff, the defendant and the police depart-
 0099 ment of the city where the plaintiff resides. If the plaintiff does
 0100 not reside in a city or resides in a city with no police department,
 0101 a copy of such order shall be issued to the sheriff of the county
 0102 where the plaintiff resides.

0103 *Sec. 8. Emergency Relief.* (a) When the court is unavailable
 0104 from the close of business at the end of the week to the resump-
 0105 tion of business at the beginning of the next week ~~a petition may~~
 0106 ~~be presented to any judge of the district court of the county who~~
 0107 ~~may be located.~~ Such judge shall ~~grant~~ relief in accordance with
 0108 paragraphs (1), (2) or (5) of subsection (a) of section 6, or any
 0109 combination thereof if the judge deems it necessary to protect the
 0110 plaintiff or minor children from abuse, upon good cause shown.
 0111 An order pursuant to this subsection may be made in an ex parte
 0112 proceeding. Immediate and present danger of abuse to the plain-
 0113 tiff or minor children shall constitute good cause for purposes of
 0114 this section.

, a party may make oral application under oath
 to any judge of the district court of the
 judicial district who may be located. Upon
 the presentation of sufficient evidence and a
 finding of good cause,

enter a temporary domestic relief order grant-
 ing

0115 (b) Any order issued under subsection (a) shall expire as of the
 0116 resumption of business of the court or within seventy-two (72)
 0117 hours, whichever occurs sooner; at which time, the plaintiff may
 0118 seek a tempo order from the court.

0119 (c) Any order issued under this section and any a menta-

0120 tion in support thereof shall be certified to the court. Such
0121 certification to the court shall have the effect of commencing
0122 proceedings under section 4 and invoking the other provisions of
0123 this act.

0124 *Sec. 9. Procedure.* Except as otherwise provided in this act,
0125 any proceeding under this act shall be in accordance with chapter
0126 60 of the Kansas Statutes Annotated and shall be in addition to
0127 any other available civil or criminal remedies.

0128 *Sec. 10. Contempt.* On motion of any party alleging a viola-
0129 tion of any order issued pursuant to this act, the court shall hold a
0130 hearing thereon. If the court finds a violation of any such order or
0131 a court approved consent agreement, the court may hold the
0132 defendant in contempt and punish him or her in accordance with
0133 law.

0134 ~~[Sec. 11. Peace bond. (a) When a party to a divorce, separate~~
0135 ~~maintenance or annulment action requests a restraining order as~~
0136 ~~authorized by paragraph (2) of subsection (a) of K.S.A. 1978~~
0137 ~~Supp. 60-1607 or a party to an action authorized by this act~~
0138 ~~requests an order for protection from abuse as authorized by this~~
0139 ~~act, and either such request is accompanied by an affidavit by~~
0140 ~~such party stating that he or she is in fear of physical abuse to~~
0141 ~~himself or herself or the minor children of the parties by the other~~
0142 ~~party to the action, then the court may issue an order requiring~~
0143 ~~such other party to appear before the court at the time stated in~~
0144 ~~the order for a hearing to determine whether or not such party~~
0145 ~~should be required to enter into a recognizance as provided in~~
0146 ~~this act.]~~

0147 ~~[(b) At the hearing it shall be the duty of the judge to examine~~
0148 ~~the parties and their witnesses. The parties may present and~~
0149 ~~cross examine witnesses. If it appears to the satisfaction of the~~
0150 ~~judge that there is reason to fear the abuse as alleged in the~~
0151 ~~affidavit, such judge shall require the party complained of to~~
0152 ~~enter into a recognizance with security and in such sum, not~~
0153 ~~exceeding five thousand dollars (\$5,000), as the judge may direct,~~
0154 ~~conditioned that the person will faithfully abide by the terms of~~
0155 ~~the restraining order. If the party complained of shall fail to find~~
0156 ~~surety and the court is satisfied that the party is not capable of~~

0157 ~~Providing the same, then the judge shall permit the recognizance~~
 0158 ~~to be given without surety and upon the party's signature only. If~~
 0159 ~~the judge finds that the party complained of refuses to give~~
 0160 ~~security or refuses to give recognizance on his or her own signa-~~
 0161 ~~ture, then the judge shall order the party committed to the county~~
 0162 ~~jail.]~~

0163 ~~(c) When a recognizance has been given, the same shall be~~
 0164 ~~discharged in one year or such earlier time as permitted by the~~
 0165 ~~court. At the end of such one year period the court may require a~~
 0166 ~~new recognizance to be given in the same manner as provided~~
 0167 ~~above, if the judge, after hearing, shall be satisfied that the~~
 0168 ~~circumstances so require.]~~

0169 ~~(d) When a recognizance has been given and it is alleged by~~
 0170 ~~the party requesting the same that such party has suffered physi-~~
 0171 ~~cal abuse by the party giving the recognizance, the court shall~~
 0172 ~~give notice to both parties of the time when a hearing on the~~
 0173 ~~alleged breach will be held. Such hearing shall be held in the~~
 0174 ~~same manner as other civil actions. If the trier of fact finds that~~
 0175 ~~there is a breach of the recognizance without reasonable cause for~~
 0176 ~~such breach, the recognizance shall be deemed forfeited. When a~~
 0177 ~~recognizance has been forfeited, proceeds therefrom shall be paid~~
 0178 ~~to the county general fund. If there be no security or insufficient~~
 0179 ~~security to satisfy the recognizance then the unsatisfied portion~~
 0180 ~~shall be deemed a judgment in favor of the county and such~~
 0181 ~~judgment may be enforced as other civil judgments in proceed-~~
 0182 ~~ings commenced by the county or district attorney.]~~

0183 ~~Sec. 15~~ This act shall take effect and be in force from and
 0184 after its publication in the official state paper. *statute books.*

Sec. 11. No person shall avail themselves of the procedure provided for in this act more than twice in any twelve month period.

See Attachments A and B

15.

ATTACHMENT A

Sec. 12. K.S.A. 1978 Supp. 20-302b is hereby amended to read as follows: 20-302b. (a) A district magistrate judge shall have the jurisdiction, power and duty, in any case in which a violation of the laws of the state is charged, to conduct the trial of misdemeanor charges and the preliminary examination of felony charges. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action in which the amount in controversy, exclusive of interests and costs, exceeds three thousand dollars (\$3,000), except that in actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction; nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in article 23 of chapter 61 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto; and nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto;

(6) actions for divorce, separate maintenance or custody of minor children, except that nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas juvenile code;

- (7) habeas corpus;
- (8) receiverships;
- (9) change of name;
- (10) declaratory judgments;
- (11) mandamus and quo warranto;
- (12) injunctions;
- (13) class actions; and
- (14) rights of majority; and
- (15) actions pursuant to the relief from domestic abuse act.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge or associate district judge, a district magistrate judge may:

- (1) Grant a restraining order, as provided in K.S.A. 60-902;
- (2) appoint a receiver, as provided in K.S.A. 60-1301; and
- (3) make any order authorized by K.S.A. 60-1607.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined de novo by a district judge or an associate district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge or an associate district judge.

ATTACHMENT B

Sec. 13. K.S.A. 21-3721 is hereby amended to read as follows: 21-3721. Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by one who knows he or she is not authorized or privileged to do so, and,

(a) He or she enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to him or her by the owner thereof or other authorized person; or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are fenced or otherwise enclosed; or

(c) He or she enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 1978 Supp. 60-1607 or pursuant to this act, and any amendments thereto and the restraining order has been personally served upon the person so restrained.

Criminal trespass is a class C misdemeanor.

Sec. 14. K.S.A. 21-3721 and K.S.A. 1978 Supp. 20-302b are hereby repealed.