

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~a.m.~~ p.m. on January 31, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Duncan and Justice were excused. Representative Erne was absent.

Committee staff present:

Terry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Representative Ben Foster
Joe Hollowell, M.D., Department of Health and Environment
Captain Don Pickert, Kansas Highway Patrol
Lynelle King, Kansas State Nurses Association
Dr. Robert Harder, Secretary, Department of Social and Rehabilitation Services
Gene Olander, Shawnee County District Attorney
Jim Clark, Kansas County and District Attorneys Association

The minutes of the meeting of January 26, 1984, were approved.

The Chairman presented several proposals requested by the Attorney General: (1) buying clubs and disclosure of refund requirements; (2) duties and responsibilities of the Attorney General; (3) purchase and sales of motor vehicles with incorrect mileage; and (4) fingerprints of suspected law violators. Motions were made, seconded, and carried that these proposals be introduced as bills. ((1) Same as SB 357, (2) HB 3016, (3) HB 3033, and (4) HB 3029)

Hearings were held on HB 2712 and HB 2694.

HB 2712 - An act relating to emergency care or treatment.

Representative Ben Foster said the bill was modeled on a similar Minnesota law which has been working well in that state since 1982. He said the present Kansas Good Samaritan Law contained a laundry list of persons who are exempt from liability. HB 2712 does away with the laundry list and provides that any person who, in good faith, assists in emergency situations is protected from civil liability. A penalty is provided for failure to assist if it is possible to do so. Representative Foster said he knew of concerns and suggestions which Dr. Hollowell would present, and he had no objection to incorporating them into the bill if they would improve it.

Dr. Joe Hollowell, Department of Health and Environment, gave, in Attachment No.1, what he considered to be the strengths and weaknesses of the bill. Among other observations, he said a statutory "duty to act" should be considered separately from a "Good Samaritan" statute.

Captain Don Pickert said the Kansas Highway Patrol was strongly opposed to HB 2712 as it eliminates the Highway Patrol from liability protection. His statement is attached (Attachment No. 2).

Lynelle King, Kansas State Nurses Association, said, although that group had not expressed a position on the bill, she would express concerns with lines 43 and 44 which excepts hospitals as a scene of emergency. She believed there could be an emergency in the hospital such as a fall in a corridor when no one was around, and hospitals should be included in subsection (c).

A member noted the lack of a definition in any of the statutes for "emergency" and questioned how this would be interpreted.

HB 2694 - An act relating to interference with parental custody.

Dr. Robert Harder, Secretary of the Department of Social and Rehabilitation Services, said the bill was introduced to address concerns regarding taking and hiding a child from its parents. It raises the penalty for interference with parental custody from a misdemeanor to a felony.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~^{p.m.} on January 31, 1984.

Although the Department has kept no records of the number of these situations, they are occurring more often and need to be addressed. An outline of his statement is attached (Attachment No.3).

Gene Olander, Shawnee County District Attorney, said most cases of interference with parental custody result from divorced parents fighting over custody rights. He noted a gap in the kidnapping statute to cover these situations and suggested the kidnapping statute be amended rather than enactment of HB 2694. This would also cover situations where children are taken from parents by strangers at stores or other places.

A member noted that, under present Kansas law, there is no difference in penalty if a parent or a stranger takes a child, and the penalty should be greater for the latter.

Mr. Olander had no objection to excepting the natural or adoptive parents in HB 2694 and passing the bill as this would give his office a tool to work with.

Jim Clark, Kansas County and District Attorneys Association, called attention to SB 368 which is presently in the Senate Judiciary Committee. He suggested combining the two bills. He noted the differences between the bills and that SB 368 allows, under certain circumstances, that the penalty may be dropped to a misdemeanor. He believed criminal penalties work better than civil penalties which, historically, have been inadequate.

The Committee discussed or took action on three bills.

HB 2585 - An act relating to real property.

Representative Knopp moved to report HB 2585 favorable for passage, seconded by Representative Wunsch. Motion carried.

SB 357 - An act relating to health spas and buying clubs.

Representative Ediger moved to report the bill favorably, seconded by Representative Wagnon. Representative Solbach made a substitute motion to amend the bill to raise the penalty for non-compliance to \$10,000, seconded by Representative Buehler. The substitute motion carried.

There was discussion regarding the similarity of SB 357 with the Attorney General's proposal pertaining to buying clubs the Committee had voted to introduce. The Chairman noted that, although the proposal used a different approach, passage of SB 357 would cover provisions in the proposal. Representative Miller moved to recommend SB 357, as amended, favorable for passage, seconded by Representative Schweiker. Motion carried. Representative Miller then moved to reconsider the action taken to introduce the proposal on buying clubs, seconded by Representative Ediger. Motion carried. The Chairman said no further action would be taken to introduce a proposal concerning buying clubs.

HB 2310 - An act relating to jury trials in misdemeanor cases.

The attached amendments (Attachment No.4) were explained by Marjorie Van Buren, Office of Judicial Administration.

There was discussion regarding the amendment on page 3 concerning municipal courts and jury trials before magistrate judges being appealed to district court and tried de novo. It was noted that amendments regarding magistrate judges were a major change.

Representative Knopp believed 96 hours after the first appearance to request a jury trial (Section 1(1) and (4) of the attachment) were not long enough. He moved to change this to 10 days, seconded by Representative Miller. Representative Schweiker made a substitute motion to change 96 hours to 10 days prior to the trial, seconded by Representative Solbach. There was discussion on the two motions, what the proper time span should be, and how this affects the stackup of cases. The vote on the substitute motion failed to carry. The vote on the original motion carried. Further discussion on the bill was continued until a later meeting.

The meeting was adjourned at 4:50 p.m.

Attachment No. 1
1-31-84

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON H.B. 2712

Attachment # 1

PRESENTED JANUARY 31, 1984 TO THE HOUSE JUDICIARY COMMITTEE
By Joseph Hollowell, M.D.

This is the official position taken by the Kansas Department of Health and Environment on H.B. 2712:

BACKGROUND INFORMATION:

K.S.A. 65-2891 and 65-2891a are commonly known as the "Good Samaritan Act." These statutes provide liability protection in specific situations to a group of "health care providers" which is defined within the statute. The general public is not protected. Several attempts to repeal or amend these statutes have been made in past years, but these attempts have been met with strong concern from Emergency Medical Service providers who felt they were being deprived of protection.

STRENGTHS:

- 1) All individuals who provide emergency medical care without compensation would be protected.
- 2) Volunteer Emergency Medical Technicians would probably have greater protection than they presently enjoy, since transportation to a medical facility is specifically covered.

WEAKNESSES:

- 1) Individuals who provide emergency medical care as a part of their job responsibilities are probably not protected. (e.g. Kansas Highway Patrol and other law enforcement officers)
- 2) Since "nominal payment" is not adequately defined, volunteer Emergency Medical Service personnel may not be protected.
- 3) A statutory "duty to act" should be separately considered from a "Good Samaritan" statute.

DEPARTMENT'S POSITION:

The department believes that these weaknesses should be corrected prior to passage of this bill.

Atch. 1

SUMMARY OF TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
1984 LEGISLATIVE SESSION

HOUSE BILL 2712

January 31, 1984

Presented by the Kansas Highway Patrol

Appeared in Opposition to House Bill 2712

The Patrol strongly opposes this bill as written.

Our opposition is based on the fact the bill would effectively eliminate the liability protection our officers presently have under the existing statute.

Every uniformed member of the Patrol has received the required hours of instruction in crash injury management and this instruction is a part of the basic training of every recruit trooper. Additionally, all uniformed members receive 8 hours of in-service training in this regard annually.

This training qualifies our personnel as "health care providers" as presently defined in K.S.A. 65-2891.

We are most concerned with the fact that in many instances our officers are the first to arrive on the scene of injury accidents and their procedure at that point is critical to the accident victims. Their skills, in many cases such as profuse bleeding, shock and others, must be immediately applied.

This applies in many other documented instances where troopers have sustained life in choking situations, heart attack victims, victims of falling objects and many others. Their response is certainly not limited to traffic accidents. They will occasionally, assist in childbirth situations.

House bill 2712, on lines 37-41 inclusive, states "Any person rendering emergency care during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering such care, shall be excluded from the protection of this section."

Line 47, subsection (d) defines compensation and we construe this to include Patrol members as being compensated in this area and thus excluded from protection.

It is our contention, that, based on our training, our high exposure to these medical emergencies and our past record in this area, members of the Patrol should continue to be protected against incurring liability in these circumstances.

We would respectfully urge your disapproval of this measure as presently written for the reasons stated.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Attachment # 3
1-31-84

Statement Regarding House Bill 2694

Attachment # 3

1. Title of Bill:
An act concerning the crime of interference with parental custody.
2. Purpose of Bill:
To increase the penalty under Kansas law for interfering with parental custody.
3. Why the Bill:
It is hoped that increasing the penalty for this offense from a Class A Misdemeanor to a Class E Felony will deter non-custodial parents and others from absconding or kidnapping children not in their legal custody.

In addition, increasing the penalty will also increase the attention focused on the perpetrators of this crime after they have left the state and are under the legal jurisdiction of another state. The increased penalty also enhances the ability of another state to deal with the perpetrator.
4. Background of the Bill:
Nationwide, children are being removed from the care of their lawful custodian which places the health and welfare of that child in jeopardy. By increasing the penalty for interfering with parental custody, children will be less at risk of illegal removal and Kansas will affirm the intent of the state to protect the children who reside within its boundaries.
5. Possible Problems with the Bill:
No problems are anticipated due to the large number of children being removed illegally from parental custody and the efforts being made to establish a nationwide network of protecting and locating these children.
6. SRS Recommendation:
Youth Services recommends full SRS support.

Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271
1-23-84

Atch. 3

HOUSE BILL No. 2310

By Representative Heinemann

2-9

017 AN ACT concerning the Kansas code of criminal procedure;
018 relating to jury trials in misdemeanor cases; amending K.S.A.
019 22-3404 and K.S.A. 1982 Supp. 22-3609 and 22-3609a and
020 repealing the existing sections.

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

022 Section 1. K.S.A. 22-3404 is hereby amended to read as fol-
023 lows: 22-3404. (1) The trial of misdemeanor cases shall be to the
024 court unless a jury trial is requested in writing by the defendant
025 not later than 48 hours prior to the trial 96 hours after the first
026 appearance on the complaint.

Failure to request trial by jury within the allotted time shall be deemed a waiver of the right for the purposes of trial and all subsequent appeals.

to trial by jury

027 (2) A jury in a misdemeanor case shall consist of six members.

028 (3) ~~Trials in the municipal court of a city shall be to the court.~~

Trials in the municipal court of a city shall be to the court.

029 *A jury trial in a misdemeanor case may be tried before a district*
030 *magistrate judge, district judge or associate district judge as*
031 *assigned by the administrative judge. Appeals from jury trials*
032 *before a district magistrate judge shall be taken pursuant to*
033 *K.S.A. 22-3609a and amendments thereto. Appeals from jury*
034 *trials before a district judge or associate district judge shall be*
035 *taken pursuant to K.S.A. 22-3601 and amendments thereto.*
036 ~~*Appeals from a jury trial in a municipal court of a city shall be*~~
037 ~~*taken pursuant to K.S.A. 22-3609 and amendments thereto.*~~

(4)

038 (4) Except as otherwise provided by law, the rules and pro-
039 cedures applicable to jury trials in felony cases shall apply to jury
040 trials in misdemeanor cases.

(5)

041 Sec. 2. K.S.A. 1982 Supp. 22-3609 is hereby amended to read
042 as follows: 22-3609. (1) The defendant shall have the right to
043 appeal to the district court of the county from any judgment of a
044 municipal court which adjudges the defendant guilty of a viola-
045 tion of the ordinances of any municipality of Kansas. The appeal

Atch. 4

0046 shall be assigned by the administrative judge to a district judge
0047 or associate district judge. The appeal shall stay all further
0048 proceedings upon the judgment appealed from.

0049 (2) An appeal to the district court shall be taken by filing a
0050 notice of appeal and any required appearance bond in the district
0051 court of the county in which the municipal court is located. No
0052 appeal shall be taken more than 10 days after the date of the
0053 judgment appealed from.

0054 (3) The notice of appeal shall designate the judgment or part
0055 of the judgment appealed from. The defendant shall cause notice
0056 of the appeal to be served upon the city attorney prosecuting the
0057 case. The judge whose judgment is appealed from or the clerk of
0058 the court, if there is one, shall certify the complaint and warrant
0059 to the district court of the county, but failure to do so shall not
0060 affect the validity of the appeal.

0061 (4) Hearing on the appeal shall be to the court ~~unless a jury~~
0062 ~~trial is requested in writing by the defendant not later than 48~~
0063 ~~hours prior to the trial. A jury in an appeal from a municipal court~~
0064 ~~judgment shall consist of six members on the record.~~

0065 (5) Notwithstanding the other provisions of this section, ap-
0066 peal from a conviction rendered pursuant to subsection (b) of
0067 K.S.A. 12-4416 and amendments thereto shall be conducted only
0068 on the record of the stipulation of facts relating to the complaint.

0069 Sec. 3. K.S.A. 1982 Supp. 22-3609a is hereby amended to
0070 read as follows: 22-3609a. (1) A defendant shall have the right to
0071 appeal from any judgment of a district magistrate judge. The
0072 administrative judge shall be responsible for assigning a district
0073 judge or associate district judge for any such appeal. The appeal
0074 shall stay all further proceedings upon the judgment appealed
0075 from.

0076 (2) An appeal to a district judge or associate district judge
0077 shall be taken by filing a notice of appeal with the clerk of the
0078 court. No appeal shall be taken more than 10 days after the date
0079 of the judgment appealed from.

0080 (3) The clerk of the district court shall deliver the complaint,
0081 warrant and any appearance bond to the district judge or asso-
0082 ciate district judge to whom such appeal is assigned. The case

unless a jury trial is requested in writing by the
defendant not later than 96 hours after the appeal
is taken.

where a record was made of the action or proceeding otherwise the case shall be tried de novo. If the case is tried on the record, the assigned district judge or associate district judge may affirm or reverse the judgment or may grant a trial de novo.

0083 shall be tried ~~de novo~~ before and determined on the record by
0084 the assigned district judge or associate district judge

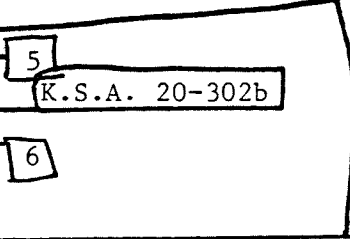
0085 (4) No advance payment of a docket fee shall be required
0086 when the appeal is taken.

0087 (5) All appeals taken by a defendant from a district magistrate
0088 judge in misdemeanor cases shall be tried and determined on the
0089 record by the court unless a jury trial is requested in writing by
0090 the defendant.

0091 (6) Notwithstanding the other provisions of this section, ap-
0092 peal from a conviction rendered pursuant to subsection (2) (c) of
0093 K.S.A. 22-2909, and amendments thereto, shall be conducted
0094 only on the record of the stipulation of facts relating to the
0095 complaint.

0096 Sec. 4. K.S.A. 22-3404 and 1982 Supp. 22-3609 and 22-3609a
0097 are hereby repealed.

0098 Sec. 5. This act shall take effect and be in force from and
0099 after its publication in the statute book.



Sec 4. K.S.A. 20-302b is hereby amended to read as follows:

* * * * *

(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.