

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 am/p.m. on February 20, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Blumenthal, Campbell, Buehler, Cloud, and Justice were excused. Representative Harper was absent.

Committee staff present:

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

Conferees appearing before the committee:

None.

Minutes of the meeting of February 15, 1984, were approved.

Introduction of Bills

The Chairman presented four requests for bills: (1) a proposal requested by the Chairman to provide that county counselors will assume the responsibility for signing vouchers instead of the county attorney. Representative Knopp moved that the proposal be introduced as a bill, seconded by Representative Douville, motion carried (HB 3077); (2) a proposal requested by Representative Mike Peterson regarding justifiable homicide in a person's dwelling or business (Attachment No.1). Representative Douville moved to introduce the proposal as a bill. The motion died for lack of a second; (3) a proposal requested by the Municipal Judges Association to provide that all types of driver restrictions be uniform in statutes (Attachment No.2). Representative Knopp moved, seconded by Representative Schweicker, that the proposal be introduced as a bill, motion carried (HB 2986); and (4), a proposal requested by Representative R. D. Miller to impose a mandatory sentence for refusal to take an alcohol blood test. It was noted that this proposal could be amended into a bill presently in Committee, HB 2772.

The Committee discussed or took action on HB 2522, SB 509, HB 2835, HB 2687, HB 2711, and HB 2712.

HB 2522 - An act relating to preliminary examinations.

An amendment on line 33 suggested by the Kansas County and District Attorneys Association (Attachment No.3, page 2) to address the Supreme Court ruling that hearsay may be permitted in preliminary hearings regarding findings for probable cause was discussed. Representative Knopp moved to adopt the amendment. The motion died for lack of a second. Representative Schweiker moved to report HB 2522 adversely, seconded by Representative Ediger. A member noted the bill had value if appropriate discovery alternatives could be added. Another member noted the bill would provide less protection to witnesses than present preliminary hearings. Representative Patrick said federal rules have specific discovery rules. He questioned if the Committee had the time or expertise to draft comparable rules, and the preliminary hearing matter should be an interim study. Because he believed reporting the bill adversely sent the wrong signal, he made a substitute motion to table HB 2522, seconded by Representative Miller. The Chairman said an interim study could be requested whether the bill was on the table or not. The substitute motion failed to carry. The vote on the original motion to report the bill adversely carried. Representative Douville voted against the motion.

SB 509 - An act relating to wills probated outside of Kansas.

The Chairman said Senator Pomeroy, sponsor, had no strong feeling regarding passage of the bill. Representative Miller agreed with the philosophy of the bill but objected to undoing Supreme Court decisions and catering to attorneys. He moved to make the bill apply to wills that have not been offered for probate in Kansas, seconded by Representative Ediger. It was noted the amendment would penalize the conferee, attorney Keith Greiner, heard previously.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S Statehouse, at 3:30 ~~xxxx~~ p.m. on February 20, 1984.

The Chairman noted Mr. Greiner had said the bill would not affect his case but would assist subsequent, similar cases regarding wills probated out-of-state. The motion failed to carry. Representative Duncan moved to report SB 509 favorable for passage, seconded by Representative Schweiker. Motion carried.

HB 2835 - An act relating to sex offenses involving family relationships.

Representative Schweiker explained an amendment in Attachment No. 4 suggested by Representative Wanda Fuller. It tightens the law regarding lewd fondling of children between 16 and 18 years of age. Representative Solbach also presented amendments (Attachment No. 5) which were almost identical to Attachment No. 4. Representative Schweiker moved to amend HB 2835 conceptually, based on the two attachments, seconded by Representative Solbach. The Chairman ruled that Attachment No. 5 would be used in drafting the amendments. Motion carried.

Representative Schweiker moved to amend line 25 of HB 2835 to change "either" to "any", seconded by Representative Solbach. Motion carried. Representative Wagnon moved to report HB 2835, as amended, favorably, seconded by Representative Wunsch. Motion carried.

HB 2687 - An act relating to qualifications for district attorneys.

Representative Knopp moved to report the bill favorably, seconded by Representative Patrick. In discussion, it was noted the bill would allow candidates for district attorney to file for that position five years after being admitted to the bar rather than having to wait six years because of time elements in taking the bar exam and receiving a license. It would make district attorney requirements consistent with those for district judges. Objection was raised that the bill loosens criteria for district attorneys by allowing them to have less experience. The point was made that the intent of present law is that district attorneys have, at least, five years' experience which HB 2687 would provide. The vote on the motion carried 7 to 6.

HB 2711 - An act relating to prostitution.

Representative Solbach moved to table the bill, seconded by Representative Erne. Representative Matlack made a substitute motion to recommend the bill favorably, seconded by Representative Wagnon. Representative Duncan called for a point of order that there had been no opportunity for debate on the original motion. Representatives Solbach and Matlack withdrew their motions. Representative Duncan moved to amend the bill on lines 32 and 40 by striking "B" and inserting "C", seconded by Representative Wagnon. It was noted the penalty should be higher because organized crime is often involved with prostitution and conferees and the bill's author, Representative Niles, had objected to lowering the penalty because a Class C misdemeanor had no deterrent effect. The vote on the motion to amend failed to carry. Representative Matlack moved to pass HB 2711 favorably, seconded by Representative Douville. Motion carried.

HB 2712 - An act relating to emergency care.

The Chairman presented an amendment (Attachment No. 6) requested by the Christian Science Committee on Publication for Kansas exempting persons objecting to emergency treatment because of religious beliefs. Representative Miller moved to adopt the amendment, seconded by Representative Duncan. Representative Schweiker made a substitute motion to strike all of Section 1, lines 22-29, which would remove the requirement that all persons must give aid but would leave the immunity section in. The substitute motion was seconded by Representative Patrick, and it carried 7 to 6. Representative Solbach moved to strike all of Section 2 and that portion of the title that refers to Section 2. This would preserve the present body of law that has built up concerning emergency treatment. Representative Matlack seconded the motion. Representative Miller made a substitute motion to report HB 2712 adversely, seconded by Representative Wagnon. A point of order regarding no debate on the original motion was called. The Chairman ruled the substitute motion was in order. It was noted HB 2712 repeals the Good Samaritan Law and an adverse report would retain it. The vote on the substitute motion failed to carry. In discussion on the original motion, Representative Solbach said his motion would expand existing law. A possible conflict in the Good Samaritan Law was pointed out that created immunity for Highway Patrolmen in existing law and takes it away under the bill. Staff said that probably the existing Good Samaritan Law should be amended to accommodate the amendment. Representative Duncan made a substitute motion to amend the bill to provide that no person would be liable if they assisted in an emergency, seconded by

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on February 20, 1984

Representative Vancrum. The Chairman said, because of so many changes in the bill, a substitute bill may be needed. He requested staff to provide a draft of amendments which would also reflect Representative Duncan's substitute motion, and discussion on the bill would be tabled with Representative Solbach's original motion to repeal Section 2 and Representative Duncan's substitute motion to give persons immunity from liability, pending.

The meeting was adjourned at 5:15 p.m.

LOUISIANA

Act 233

1983 REGULAR SESSION

Attachment # 1

2-20

active service at the time of death. Benefits shall cease upon remarriage and shall resume upon a subsequent divorce or death of the new spouse; however, if the member was eligible to retire on the date of his death, benefits shall not cease upon remarriage.

\* \* \*

Approved June 26, 1983.

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JUSTIFIABLE HOMICIDE—USE OF DEADLY FORCE <sup>21-3211 & 3212</sup>  
WITHIN A DWELLING OR PLACE OF BUSINESS

*Committee  
Bill for  
Judiciary*

ACT NO. 234  
SENATE BILL NO. 147

AN ACT

To enact R.S. 14:20(4) relative to justifiable homicide, to provide with respect to the use of deadly force within a dwelling, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:20(4) is hereby enacted to read as follows:

§20. Justifiable homicide

A homicide is justifiable:

\* \* \*

(4) When committed by a person lawfully inside a dwelling against a person who is attempting to make an unlawful entry into the dwelling or who has made an unlawful entry into the dwelling and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises. The homicide shall be justifiable even though the person committing the homicide does not retreat from the encounter.

*OR HIS OR HER PLACE OF BUSINESS*

*DETERMINATION SHALL BE MADE BY A CORONER'S JURY*

Approved June 29, 1983.

*Bill - ...  
924  
...  
e.g., Ray Verlane*

*Atch. 1*

PROPOSED PROVISION TO MAKE DRIVING RESTRICTIONS MORE UNIFORM

The court may (shall) enter an order which restricts the person convicted to operating a motor vehicle on the highways of this state as follows:

(1) In going to or returning from the persons place of employment, or schooling, (2) in the course of the person's employment, (3) during a medical emergency, (4) in going to and returning from a grocery store and service station near the person's home, (5) in going to and returning from probation or parole meetings, drug or alcohol counseling, and any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008. Said restrictions shall be for a period of not less than \_\_\_\_\_ months nor more than \_\_\_\_\_ months. To facilitate enforcement the court, in its discretion, may further restrict the defendant's driving so as to prohibit driving at certain times of day or to certain places.

Attachment  
# 2

Atch. 2



3  
-20

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Thomas J. Erker

# Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351  
EXECUTIVE DIRECTOR • JAMES W. CLARK

Attachment  
# 3

TO: HOUSE JUDICIARY COMMITTEE  
FROM: KANSAS COUNTY & DISTRICT ATTORNEYS ASSOCIATION  
SUBJ: HB 2522 AMENDMENT

I APOLOGIZE FOR HAVING TO AMEND A BILL THAT THIS COMMITTEE INTRODUCED AT THE REQUEST OF OUR ASSOCIATION. THE AMENDMENT IS NEEDED, HOWEVER, BECAUSE OF TWO DECISIONS BY THE KANSAS SUPREME COURT THAT WERE HANDED DOWN AFTER THE BILL WAS REQUESTED.

IN STATE V. GREEN, \_\_ Kan. \_\_, 666 P. 2d 717 (July 15, 1983), the Court abrogated legislative intent to preclude direct appeal of a conviction and sentence upon a plea of guilty by holding that since new court policy allows review of sentences, and since the statute does not specifically say "sentence", the Supreme Court would allow a review of sentences on direct appeal. This matter was covered in the hearing on HB 2802, held Monday, February 6, 1984.

IN STATE V. CREMER, \_\_ Kan. \_\_, #54, 432, (January 13, 1984), the Kansas Supreme Court becomes concerned over legislative intent, and reverses a Court of Appeals decision which had allowed the admission of hearsay testimony at preliminary hearings. The Supreme Court, while recognizing that earlier Kansas cases had recognized that strict observance of rules of evidence was not required in preliminary hearings

held, however, that enactment of the Kansas Code of Civil Procedure in 1963 applied the same rules of evidence to all procedures, absent a court rule or statute to the contrary (emphasis added). The

Attch. 3

Supreme Court recognized one such statutory exception when it upheld the validity of K. S. A. 1982 Supp. 22-2902a, which allows the hearsay report of the K.B.I chemist in preliminary examinations. State v. Sherry , 233 Kan. 920, 667 P. 2d 367 (1983). The Supreme Court then holds in Cremer that K. S. A. 60-402 should be strictly construed and rules that the rules of evidence excluding hearsay apply to preliminary examinations.

Accordingly, the Kansas County & District Attorneys Association offers the following proposed amendment to HB 2522:

At Line 33, after "present", add ". Hearsay evidence may be admitted, as long as there is a substantial basis for crediting such evidence, and may be relied upon and form the basis for a probable cause finding."



HOUSE BILL No. 2835

By Representative W. Fuller

(By request)

2-2

0018 AN ACT relating to crimes and punishments; concerning certain  
0019 sex offense and offenses relating to family relationships and  
0020 children; amending K.S.A. 1983 Supp. 21-3503, 21-3504, 21-  
0021 3602 and 21-3603 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1983 Supp. 21-3503 is hereby amended to  
0024 read as follows: 21-3503. (1) Indecent liberties with a child is  
0025 engaging in either of the following acts with a child who is not  
0026 married to the offender and who is under 16 years of age:

0027 (a) Sexual intercourse;

0028 (b) sodomy; or

0029 ~~(b)~~ (c) any lewd fondling or touching of the person of either  
0030 the child or the offender, done or submitted to with the intent to  
0031 arouse or to satisfy the sexual desires of either the child or the  
0032 offender or both.

0033 (2) Indecent liberties with a child is a class C felony.

0034 Sec. 2. K.S.A. 1983 Supp. 21-3504 is hereby amended to read  
0035 as follows: 21-3504. (1) Aggravated indecent liberties with a  
0036 child is the commission of indecent liberties with a child, as  
0037 defined in K.S.A. 21-3503 and amendments thereto, by:

0038 ~~(a) A parent, adoptive parent, stepparent or grandparent of~~  
0039 ~~the child; or~~

0040 ~~(b)~~ (b) any guardian, proprietor or employee of any foster home,  
0041 orphanage or other public or private institution for the care and  
0042 custody of minor children, to whose charge the child has been  
0043 committed or entrusted by any court, probation officer, depart-  
0044 ment of social and rehabilitation services or other agency acting  
0045 under color of law.

0046 (2) Aggravated indecent liberties with a child is a class B  
0047 felony.

0048 Sec. 3. K.S.A. 1983 Supp. 21-3602 is hereby amended to read  
0049 as follows: 21-3602. Incest is marriage to or engaging in sexual  
0050 intercourse ~~or~~, sodomy or any unlawful sexual act with a person  
0051 who is ~~16~~ 18 or more years of age and who is known to the  
0052 offender to be related to the offender as any of the following  
0053 biological relatives: parent, child, grandparent of any degree,  
0054 grandchild of any degree, brother, sister, half-brother, half-sister,  
0055 uncle, aunt, nephew or niece.

0056 Incest is a class E felony.

0057 Sec. 4. K.S.A. 1983 Supp. 21-3603 is hereby amended to read  
0058 as follows: 21-3603. (1) Aggravated incest is marriage to or

0059 engaging in sexual intercourse, ~~sodomy or any unlawful sexual~~  
0060 act with a person who is ~~16 or more~~ under 18 years of age and  
0061 who is known to the offender to be related to the offender as  
0062 ~~natural parent or child, or as natural grandparent or grandchild of~~  
0063 ~~any degree~~ any of the following biological, step or adoptive  
0064 relatives, regardless of legitimacy: child, grandchild of any de-  
0065 gree, brother, sister, half-brother, half-sister, uncle, aunt,  
0066 nephew or niece.

0067 (2) Aggravated incest is a class D felony.

0068 Sec. 5. K.S.A. 1983 Supp. 21-3503, 21-3504, 21-3602 and  
0069 21-3603 are hereby repealed.

0070 Sec. 6. This act shall take effect and be in force from and  
0071 after its publication in the statute book.

any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both.

Alch. 4



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2-21

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0064 ~~relatives, regardless of legitimacy: child, grandchild of any de-~~  
0065 ~~gree, brother, sister, half-brother, half-sister, uncle, aunt,~~  
0066 ~~nephew or niece.~~

any of the following acts

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0069 21-3603 are hereby repealed.

0070 Sec. 6. This act shall take effect and be in force from and  
0071 after its publication in the statute book.

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- (b) sodomy;
- (c) any unlawful sex act;
- (d) any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both

6

# Christian Science Committee on Publication For Kansas

820 Quincy Suite K  
Topeka, Kansas 66612

Office Phone  
913/233-7483

Attachment # 6

To: House Judiciary Committee

Re: HB 2712

It is requested that the following wording be added after line 0049 on page 2 of HB 2712:

"This section shall not be construed to require a person who is ill or injured to be administered first aid or emergency treatment if such person objects thereto on religious grounds."

This change would be of great benefit to those who rely on spiritual means alone for healing in lieu of medical treatment. As worded, this provision would apply only in cases where the person's objection could be made known to those attempting to provide assistance.

I will be glad to answer any questions that may arise as a result of this request.



Keith R. Landis  
Committee on Publication  
for Kansas

*Atch. 6*