

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~ p.m. on March 21, 1984 in room 526-S of the Capitol.

All members were present except:

All members were present.

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:

Senator Ron Hein
Janet Williams, Report Examiner for the Kansas Public Disclosure Commission
Senator Jack Steineger
Matt Lynch, Judicial Council
Wayne Stratton, attorney, Kansas Hospital Association
Marjorie Van Buren, Judicial Administration
Randy Hearrell, Judicial Council

The Chairman said SB 761, code for the care of children and juvenile offenders code, scheduled for a hearing at this meeting, would be stricken from the agenda because no one expressed support.

Hearings were held on SB 492, SB 801, SB 741, and SB 734.

SB 492 - Outside interests of state personnel.

Senator Ron Hein said the bill was the result of an interim study on Proposal No. 54 and should be amended to correct a concern that the bill required too many state employees to file disclosure statements. This is estimated to be 12,000 to 13,000 people. He noted action should be taken before the March 31 deadline when names of designees are submitted by agency heads and before the deadline for filing substantial interest statements in April. Senator Hein said he would furnish the Committee with suggested amendments.

Janet Williams, Report Examiner for the Kansas Public Disclosure Commission, reviewed provisions of SB 492. She said 4,500 people in all categories filed statements last year, and the alltime high was 7,000. If a threshold is placed on the amount of money handled to exempt employees from filing, she said it should be lower than \$5,000, but a threshold is not being proposed by the Commission. She believed amendments suggested by Senator Hein would substantially reduce the number of filings.

SB 801 - Peace bond procedures.

Senator Jack Steineger supported the bill. He noted the efforts of many women's groups to do something about domestic violence and believed requiring a peace bond would help deter abuse. Peace bonds were formerly part of Kansas law and worked well because, if the abuser breached the peace bond, it was forfeited. It was noted peace bonds could also be used in neighborhood arguments. A member expressed concern that there was no time limit on how long a person had to wait to appear before a judge.

The Chairman said the Kansas Association of Domestic Violence Programs, whose representative could not be present, supports SB 801.

SB 741 - Subpoena of business records.

Matt Lynch said the Judicial Council recommended the bill which provides an alternative regarding subpoenas for businesses to produce records when needed in court action by allowing copies of records to be sent to the court clerk unless the custodian is required to be there in person. The bill was originally requested by the Kansas Hospital Association and was extended to include all businesses.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 21, 1984.

Wayne Stratton, attorney representing the Kansas Hospital Association, said hospitals are burdened by subpoena of records as it ties up personnel who might spend one-half day in court just to present the records. Since hospitals do not like to turn over original records, Mr. Stratton said the bill's provision to allow copies, if the parties do not object, is needed.

Marjorie Van Buren, Judicial Administration, presented amendments to SB 741 (Attachment No. 1) which would assure that a notice from the court clerk to the parties would be on the outside of the package to let the parties know the records have arrived in court. A member suggested that the custodian furnish a copy of the affidavit to the party rather than having the clerk notify the party.

SB 734 - Corporate fiduciary's appointment as guardian.

Randy Hearrell, Judicial Council, said the bill was intended to clean up K.S.A. 59-1701 to make it consistent with 1983 SB 11 which amended the guardian and conservator act.

SB 484 - Kansas Parentage Act.

Representative Patrick explained amendments to the bill (Attachment No. 2) that he and Representative Whiteman had developed. Following discussion regarding amendment (1), Section 6, the paternity status of semen donors, and unwed women having the right to be artificially inseminated, Representative Knopp moved to strike lines 102-105, seconded by Representative Patrick. It was noted the motion would change current policy and would encourage single women to get pregnant by artificial insemination. A member said the philosophy of the bill was to protect the child's rights, not the parent's. The vote on the motion failed to carry.

Representative Knopp moved to amend line 60 to insert "by the filing of a journal entry of" before "decree" and that this language be inserted in any other section that pertains to the 300-day limit. The motion was seconded by Representative Schweiker. He believed this would clarify the intent that the time limit for presumption of paternity would be 300 days after the divorce. Motion carried.

Representative Miller moved to adopt the suggested amendment in (3) of the statement, seconded by Representative Ediger. Motion carried.

In regard to amendment (4), Representative Schweiker moved to strike lines 198-199 which would give the right to trial by jury, seconded by Representative Patrick. A member pointed out, if this language is removed, cases would resort to common law which should not be extended, and some issues, such as support money, are not appropriate for juries to decide. The motion failed to carry.

Representative Miller moved to adopt amendment (5), seconded by Representative Patrick. Motion carried.

Representative Knopp moved to adopt amendment (6), seconded by Representative Whiteman. Following discussion which included the difficulty in setting the criteria for indigency, the vote on the motion failed to carry.

Representative Duncan moved to adopt amendment (7), seconded by Representative Buehler. Motion carried.

In discussion regarding amendment (8) to strike loco parentis provisions, Representative Patrick said, if this is left in, it should be referenced to K.S.A. 38-114 pertaining to children's homes. He moved to make this reference and to reference any other statute that refers to loco parentis, seconded by Representative Vancrum. Motion carried.

Representative Miller moved to add a provision in SB 484 regarding contingency fees that no paternity case shall be accepted by private counsel, seconded by Representative Douville. Representative Whiteman made a substitute motion to report SB 484, as amended, favorably, seconded by Representative Blumenthal. Motion carried.

The meeting was adjourned at 5:10 p.m.

0046 records delivers to the clerk of the court by mail or otherwise a
0047 true and correct copy of all the records described in the sub-
0048 poena within 10 days after receipt of the subpoena.

0049 The records described in the subpoena shall be accompanied
0050 by the affidavit of a custodian of the records, stating in substance
0051 each of the following: (1) The affiant is a duly authorized custo-
0052 dian of the records and has authority to certify records; (2) the
0053 copy is a true copy of all the records described in the subpoena;
0054 and (3) the records were prepared by the personnel or staff of the
0055 business, or persons acting under their control, in the regular
0056 course of the business at or about the time of the act, condition or
0057 event recorded.

0058 If the business has none of the records described in the
0059 subpoena, or only part thereof, the affiant shall so state in the
0060 affidavit and shall send only those records of which the affiant
0061 has custody. When more than one person has knowledge of the
0062 facts required to be stated in the affidavit, more than one affidavit
0063 may be made.

0064 The copy of the records shall be separately enclosed in a
0065 sealed envelope or wrapper on which the title and number of the
0066 action, name of the witness and the date of the subpoena are
0067 clearly inscribed. The sealed envelope or wrapper shall be
0068 delivered to the clerk of the court.

0069 The reasonable costs of copying the records may be demanded
0070 of the party causing the subpoena to issue. If the costs are
0071 demanded, the records need not be produced until the costs of
0072 copying are advanced.

0073 (c) The subpoena shall be accompanied by an affidavit to be
0074 used by the records custodian. The subpoena and affidavit shall
0075 be in substantially the following form:

0076 Subpoena of Business Records
0077 State of Kansas
0078 County of _____
0079 (1) You are commanded to produce the records listed below before
0080 _____
0081 (Officer at Deposition) (Judge of the District Court)
0082 at _____
0083 (Address)
0084 _____
0085 in the city of _____, County of _____
0086 on the _____ day of _____
0087 19____, at _____ o'clock _____ m., and to testify on behalf of the
0088 _____ in an action now pending be-

, and a notice to the clerk of the court to notify the party listed in subsection (3) of the subpoena

Atch. 1

0089 tween _____, plaintiff, and
0090 _____, defendant. Failure to comply with
0091 this subpoena may be deemed a contempt of the court.

0092 (2) Records to be produced: _____
0093 _____
0094 _____
0095 _____

0096 (3) You may make written objection to the production of any or all of the
0097 records listed above by serving such written
0098 objection upon _____ at _____

0099 (Attorney) (Attorney's Address)
0102 (within 10 days after service of this subpoena) (on or before
0103 _____, 19____). If such objection is made, the
0104 records need not be produced except upon order of the court.

0105 (4) Instead of appearing at the time and place listed above, it is sufficient
0106 compliance with this subpoena if a custodian of the business records delivers to
0107 the clerk of the court by mail or otherwise a true and correct copy of all the
0108 records described above with 10 days after receipt of this subpoena.

0109 (5) The copy of the records shall be separately enclosed in a sealed envelope
0110 or wrapper on which the title and number of the action, name of the witness, and
0111 the date of this subpoena are clearly inscribed. The sealed envelope or wrapper
0112 shall be delivered to the clerk of the court.

0113 (6) The records described in this subpoena shall be accompanied by the
0114 affidavit of a custodian of the records, a form for which is attached to this
0115 subpoena.

0116 (7) If the business has none of the records described in this subpoena, or only
0117 part thereof, the affidavit shall so state, and the custodian shall send only those
0118 records of which the custodian has custody. When more than one person has
0119 knowledge of the facts required to be stated in the affidavit, more than one
0120 affidavit may be made.

0121 (8) the reasonable costs of copying the records may be demanded of the party
0122 causing this subpoena to issue. If the costs are demanded, the records need not
0123 be produced until the costs of copying are advanced

0124 _____
0125 Clerk of the District Court

0126 [Seal of the District Court]
0127 Dated _____, 19____.

0128 Affidavit of Custodian of Business Records
0129 State of _____
0130 County of _____

0131 I, _____, being first duly sworn, on oath,
0132 depose and say that:

0133 (1) I am a duly authorized custodian of the business records of
0134 _____ and have the authority to certify those
0135 records.

0136 (2) The copy of the records attached to this affidavit is a true copy of the
0137 records described in the subpoena.

0138 (3) The records were prepared by the personnel or staff of the business, or
0139 persons acting under their control, in the regular course of the business at or
0140 about the time of the act, condition or event recorded.

0141 _____
0142 Signature of Custodian

0143 Subscribed and sworn to before the undersigned on _____
0144 _____
0145 Notary Public
0146

0147 My Commission Appointment Expires: _____

0148 _____
0149 (The clerk shall notify the party causing the subpoena to issue of the receipt of

, and a notice to the clerk of the court to notify the party listed in subsection (3) above

002

SENATE BILL No. 484

1) Strike all of Section 6

Section 6(a) is present law. Section 6(b) was added in anticipation of the surrogate mother bill passing. It was killed in committee, so for this and several other policy reasons, we recommend that this section of the bill be stricken.

2) Line 60

Change the wording so that the 300-day time period runs from the time of the filing of the journal entry of judgment in any action concerning annulment or divorce.

3) Line 188-190

Add language to make sure that the written medical records and physician notes are included in the nonprivileged evidence.

4) Strike line 198-199

Gives the right to trial by jury.

5) Line 220-221

Add language to include medical expenses and education.

6) Line 267

Add language requiring a showing of financial need before a person can utilize the services of the county or district attorney in this type of action.

7) Strike lines 358-365

It is in conflict with HB 2835.

8) Strike lines 392-393 and 400

Question the need for this language.