

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson10:00 a.m./~~pm~~ on February 1, 1984 in room 514-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,
Gaines, Hein, Mulich, Steineger and Werts.Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Lee Sipes, Topeka Police Department
Lt. William Dickerson, Topeka Police DepartmentSenate Bill 368 - Crime of interference or aggravated interference with parental custody.

Jim Clark testified his organization had requested the bill, and they are in support of it. He suggested the way the bill is written the addition of subsection (b) needs to be inserted under Section (1), in line 24. He said it is not criminally and logically clear. It does not apply to the court authorized weekend situation and summer situation that is legal in its inception and the non-custodial parent does not bring the child back. House Bill 2694 deals with the same statute, and it raises the penalty. The bill is in the House Judiciary Committee and the committee was concerned with somebody taking your child to raise and would not be charged with kidnapping. Someone in the House committee suggested changing the kidnapping statute and not raise the penalty. The chairman suggested to combine the two concepts of the two bills. Mr. Clark agreed. He said Gene Olander was concerned with raising the penalty in cases of parents keeping the child that arise from domestic situations. The chairman stated he is concerned with overcrowded prisons and raising the penalty from misdemeanors to felonies. Mr. Clark replied, that is always a problem. A committee member inquired, what do you accomplish by raising the penalty? Mr. Clark replied, there is a theory that a higher penalty is more deterrence, but in domestic situations where parents and children are involved, don't think people think that through. He is not in favor of raising the penalty; would prefer the approach of Senate Bill 386 and not the house bill. The chairman suggested changing the language on page 1 in SB 368, lines 29 and 30 "refuse" to "refusing" and "impede" to "impeding", and insert in line 24, after "enticing away", add "or refusing and impeding". A committee member inquired about the appropriateness of age 14 as a cut off; how has it been working? Mr. Clark replied, he has not heard anything on that. A committee member inquired, why have age 14 as a cut off? Mr. Clark replied, at that age the fourteen year olds solve their own custody problems themselves. The committee member inquired if there were any other statute to make use of for kidnapping? Mr. Clark replied, no. The committee member inquired, what is the advantage in raising it to a felony in interstate situations? Mr. Clark replied, in subsection (2), 3422a, is aggravated interference.

Lee Sipes testified the police department does support the bill; the interference from parental custody being raised from misdemeanor to a felony. He referred to a local case, and they are limited to help the parents because of Kansas law. The chairman recognized Lt. Dickerson who is working on this particular case. Lt. Dickerson explained this law limited his investigation. The KBI wanted to get

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
 room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 1, 1984

Senate Bill 368 continued

into the case, but they can't get involved unless the penalty is a felony. He believes the children are out of the state, and he needs help in finding them. The chairman inquired, if he had any idea of the incidence of such cases in Kansas in any given year? How many would we be talking about? He replied, he didn't know. Jim Clark replied, this situation is rare; this local situation is really unusual. The normal parent thing is not unusual. A committee member inquired, why are you opposed to raising it from a class A misdemeanor to a felony if it will help the officer? Mr. Clark replied, you are going to make a felony to cover hundreds of domestic situations where the problem could be solved by changing the kidnapping statute. The chairman inquired if there were any legislation being proposed to change the kidnapping statute? Mr. Clark replied, this just came up yesterday in the House committee, and he has not given suggested language to staff for kidnapping statutes. A committee member suggested in Section (2), subsection (c), aggravated interference with custody takes child to whereabouts unknown. Mr. Clark replied, that would solve that problem. He had no problem with that.

Senate Bill 486 - Adoption investigations by SRS.

The chairman reviewed the hearing that was held on this bill on January 20. Following committee discussion, Senator Burke made a conceptual motion to make sure that information required to be submitted would apply if the parent were known. Senator Mulich seconded the motion, and the motion carried. Senator Gaines made a conceptual motion that SRS be the resource for the investigation if other resources are not available. Senator Gaar seconded the motion, and the motion carried. Senator Feleciano made a conceptual motion where the cost of study made is a preventive problem in private adoptions, access be made to fund for hard to adopt children. Senator Gaar seconded the motion. The motion carried. Senator Feleciano moved that the bill be reported favorably as amended. Senator Gaar seconded the motion, and the motion carried.

Senate Bill 368 - Crime of interference or aggravated interference with parental Custody.

The consensus of the committee was to wait until Jim Clark had the suggested language to the kidnapping statute. Senator Winter requested staff to come up with the language to make the penalty a felon if whereabouts are unknown or out of the state.

The meeting adjourned.

2-1-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Det Wm Duchin	435 Tachson	Topeka Police Dept
St. Joe Signs	" "	" " "
Julie Hack	Lawrence, KS.	Observer
Allan L. Hurkurt	Topeka	SRS Legal Staff
Mike Browning	Topeka	KLDH-TV
Kis Rippon	Lawrence	Sen Steinger
Tom Futzler	Lawrence	Sen Hess
Cyril Clark	Topeka	KC DAA
Louise Ross	Topeka	KSN TV

Attach. # 1

TESTIMONY OF MONTE EVANS, WICHITA
REGARDING S.B. 485

Good Morning!

I'm here to talk about the importance of surrogate motherhood. My wife and I have been trying to have children for several years. After consultation with numerous doctors and after much infertility testing, we came to the conclusion that we are not able to have children by natural means. The next step was to explore adoption as the route to fulfilling our dreams of having a family. We visited all adoption agencies in our area and several in other states, but were shocked to learn that divorces in our past prevented us from even being placed on a waiting list. In addition, there was terminal illness in my wife's family which was used as another reason for eliminating us from consideration.

As a method of coping with the despair associated with infertility a support group was formed in Wichita as we were discovering our fertility problems. We found that many of the couples there had experienced even more difficulty than we had. One couple had been on a waiting list for 7 years when they were finally notified that a baby had been found for them. They decorated a nursery, paid medical bills and attorney fees only to have the deal fall through. Later, they were removed from the agency's list because it was discovered that there was a terminal illness in the wife's background.

It was through the infertility group that my wife learned of surrogate motherhood as an option for childless couples. We did some research on the subject and found there were 2 options: Private surrogate and surrogate motherhood through an agency. Private surrogate motherhood is accomplished by finding a potential mother and making a completely unprotected agreement. We did not feel comfortable with not having any guarantee of the mother's habits during pregnancy or even that she would surrender the child at birth. Further, it is difficult to find a doctor to perform the artificial insemination to achieve pregnancy. We then turned to the other option and found the Hagar Institute's policies most to our liking. The potential mothers are carefully screened and agree contractually to certain requirements governing the pregnancy in addition to surrender of the child. The Hagar Institute also protects the identity of all parties involved. To us, it seemed that they were conscientiously attempting to provide some measure of protection in an area where the law is silent.

Attch. 1

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It is for this reason the legislation is needed to govern the practice of surrogate motherhood. The legislature is now capable of providing legitimacy to a procedure that is already occurring and establish legal guidelines to be followed. The possibility of eliminating the adoption will lead to a clear understanding of the wife being the mother of the child from the beginning. She will then feel more like a part of the process. Without a doubt, the regulation of surrogate motherhood will produce fewer negative results.

Therefore, I strongly recommend passage of the legislation presently under consideration, S.B. 485.



Attach. # 2

STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ROBERT C. HARDER, SECRETARY

Child Support Enforcement Program

1st Floor, Perry Building
2700 West Sixth Street
Topeka, Kansas 66606
(913) 296-3237

STATE OFFICE BUILDING
TOPEKA, KANSAS 66612

February 1, 1984

Senator Elwaine Pomeroy
Chairman, Senate Judiciary
413 N
Capitol
Topeka, Kansas 66612

Re: S.B. 485 - (surrogate mothers)

Dear Senator Pomeroy:

Scheduling conflicts will prevent me from attending Thursday's hearing on S.B. 485. I did have one concern about the verbage on lines 0170-0172 which I would like to express. As written, the bill would give the sperm donor the opportunity to void the contract if he requests "a paternity test within 30 days of birth and the results do not confirm his paternity." The most advanced extended factor blood tests (HLA and white and red cell enzymes) cannot "confirm" paternity. These tests only result in a probability of paternity. Often the probability is in the 90% range - sometimes as high as 99.9%. However, just as often the probability is lower. What would happen if a sperm donor requested blood tests and the result was 80% or 75%. Would this confirm his paternity? I cannot give a percentage figure which could be said to "confirm" paternity since only a court may establish paternity after weighing the evidence.

One solution might be to amend the wording on line 0171 to state "if the results exclude the possibility of paternity he may declare the contract void." The tests I mention are capable of definitely excluding a putative father because certain genetic markers found in the child and putative father are totally incompatible.

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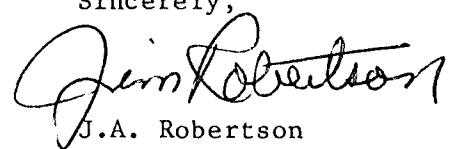
Senator Elwaine Pomeroy

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02-01-84

Aside from this one problem, I find the bill to be well drafted and appropriate.

Sincerely,



J.A. Robertson
CSE Senior Legal Counsel and
Kansas URESA Information Agent

JAR:va
1054B

Attach. # 3

SENATE BILL No. 368

By Committee on Judiciary

2-23

0017 AN ACT concerning crimes and punishments; relating to inter-
0018 ference and aggravated interference with parental custody;
0019 amending K.S.A. 21-3422 and 21-3422a and repealing the
0020 existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 21-3422 is hereby amended to read as fol-
0023 lows: 21-3422. (1) Interference with parental custody is leading,
0024 taking, carrying away, decoying or enticing away any child under
0025 the age of ~~fourteen~~ (14) 14 years, with the intent to

0026 ~~(a) Detain or conceal such the child from its the child's parent,~~
0027 guardian, or other person having the lawful charge of ~~such the~~
0028 child; or

0029 ~~(b) refuse or impede the return of the child in violation of the~~
0030 ~~residency provisions of a custody decree.~~

0031 (2) Interference with parental custody is a class A misde-
0032 meanor.

0033 Sec. 2. K.S.A. 21-3422a is hereby amended to read as follows:

0034 21-3422a. (1) Aggravated interference with parental custody is:

0035 (a) Hiring someone to commit the crime of interference with
0036 parental custody, as defined by K.S.A. 21-3422; and amendments
0037 thereto; or committing

0038 (b) the commission of interference with parental custody, as
0039 defined by K.S.A. 21-3422; when done with the intent to deprive
0040 of custody such child's parent, guardian, or other person having
0041 the lawful charge or custody of such child; and when and
0042 amendments thereto, by a person who:

0043 (a) Committed by a person who (i) Has previously been
0044 convicted of interference with parental custody, as defined by
0045 K.S.A. 21-3422 the crime;

: (a)

refusing to or impeding return of any child under the
age of 14 years

Attach. 3

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0046 (b) committed by a person (ii) commits the crime for hire;
0047 (c) committed by a person who (iii) takes the child outside
0048 the state without the consent of either the person having custody
0049 or the court;

0050 (d) committed by a person who, (iv) after lawfully taking the
0051 child outside the state while exercising visitation or custody
0052 rights, refuses to return the child at the expiration of such the
0053 rights; or

0054 (e) committed by a person who, (v) at the expiration of
0055 visitation or custody rights outside the state, refuses to return or
0056 impedes the return of such the child.

0057 (2) Aggravated interference with parental custody is a class E
0058 felony.

0059 (2) (3) This section shall be a part of and supplemental to the
0060 Kansas criminal code.

0061 Sec. 3. K.S.A. 21-3422 and 21-3422a are hereby repealed.

0062 Sec. 4. This act shall take effect and be in force from and after
0063 its publication in the statute book.

(v) detains or conceals the child, or refuses to or impedes return of the child, for a period of 15 or more days;
(vi) detains or conceals the child in an unknown place, whether inside or outside this state;

(vii)