

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on February 2, 1984, 19 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaar, Gaines, Hein, Hess, 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:

Monte Evans, Wichita
Barbara Reinert, Kansas Women's Political Caucus
Linda Woody, National Organization for Women

Senate Bill 485 - Surrogate mothers.

Monte Evans appeared to discuss the importance of surrogate motherhood. He related the problems he and his wife encountered when they found out they could not have a family. They could not be placed on a list to adopt because of divorces in the past and background of terminal illness. They found another option through an infertility group, and that was private surrogate or surrogate motherhood through an agency. They found the Hagar Institute policies much to their liking and felt the institute would provide the protection they desired. The regulation of surrogate motherhood will produce less negative results. See Attachment No. 1.

Barbara Reinert testified her organization is impressed with the high quality, planning, screening, and the professional people at the Hagar Institute. There is no doubt about the compassionate goals of the institute. Her organization is concerned with the cut rate imitator who might come in and exploit. She testified they are concerned with the best interests of the child if the surrogate does not relinquish the child. Who is really going to determine the best interest of the child? Is the father providing for support? If father does not get the child and does not maintain the financial share of the responsibility, and would the state have to pay for that responsibility or husband of the surrogate? Should the husband of the surrogate contribute to bringing up the child? They have concern with exploitation of one person or another.

Linda Woody explained the organization she represents is made up of women and children, and they work toward the rights of women being equal with men. She said their main concern with the bill is the same as the Women's Political Caucus. If the surrogate voids the contract, they feel that is very unfair to the man for him to maintain that child until age eighteen. The chairman inquired, should it be changed to provide that the surrogate's husband would be deemed to be the father? She replied, no. It is forcing something on him; you cannot force people to do what they don't want. It could create a situation where a couple might like a child and have the child with someone else and maintain that child. The chairman inquired how they would like deleting that section? She answered, yes. A committee member inquired, what is your position if deleting the results in the contract providing the same thing? Parties contractually requiring the sperm donor to be responsible financially? She replied, she still doesn't think that is fair. It is a risk involved, if she desires to keep the child, she should face the responsibility and not force someone to do something. It violates rights of men in this particular situation. The chairman explained, it only speaks to the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 2, 19 84

Senate Bill 485 continued

financial responsibility and not to visitation and custody rights. The Kansas Parentage Act and this bill would have to be merged and the matter of visitation and custody would be dealt with in the Kansas Parentage Act. She said she is supporting the bill because it is up. She thinks this is something we will be forced to face before too long. The chairman pointed out if the committee decides to pass the bill, we will be setting policy. A committee member inquired, if the surrogate changes her mind, what about the \$18,000 the father had to put up? The chairman replied, the bill doesn't deal with that. See Attachment No. 2.

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

Staff distributed balloon copies of the bill showing amendments proposed by Jim Clark, and explained the amendments. A committee member commented the word "impeding" is going to add mightily to the caseload of the Court of Appeals. It is vague and probably unconstitutional; it is not a clearly defined term. Another committee member was troubled by the 15 days to the return of the child. Another committee member was troubled by that also, and noted it is in violation of the residency provisions of the court order for submitting any mitigating circumstances. Another committee member pointed out detaining or concealing doesn't fit and suggested deleting (v) of the proposed amendments. If the parent takes the child and don't know their whereabouts, should be able to make a felony out of it with the ability to find that person, as you have when you charge a felony. A committee member inquired, could we use "conspires to prevent the return"? Senator Werts moved to amend the bill by using the wording "conspires to prevent". Following committee discussion, Senator Werts made a substitute motion, in line 29, to amend the bill by using the wording "refusing to return or conspiring to prevent to return" and under (v). Senator Gaar seconded the motion. A committee member supports the motion but does not support the 15 day section of the bill. Senator Werts restated his motion and added, to strike "for period of 15 or more days". The motion carried. Senator Feleciano moved to amend the bill by adopting the wording in (VI). Senator Winter seconded the motion. The motion carried. See Attachment No. 3.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Ruth Wilkin	Topeka	Soil Savers
Joan Kroe	Topeka	K.B.A.
Brita Ellen Richardson	K.C.	KS Catholic Conference
Beth Bridgman	Topeka	Hagan Institute
Monte Evans	Wichita	
Darlene Stearns	Topeka	Consultation of Churches
Bob Ruvels	L.C.	KS Catholic Conference
Matt Lynch	Topeka	Justicial Council
Mary Humphrey	"	KS Planned Parenthood
Celine Whitehall	Topeka	SKS
L.C. Woody	Callanwood Falls	KS National Organization for Women
Donita J Johnson	Topeka	Washburn University Student Nurse
Tom Fritzyer	Lawrence	Sen Hess
Barb Kernert	Topeka	KS Women's Political Caucus
David Martin	Topeka	Washburn
Julie Thompson	Topeka	Washburn Univ. Student Nurse
M. Hoover	"	Chafar-Jawar
Jo M'Donnell	Topeka	Office of the A+T Gen
Norma Daniels		Senator
Chris Smith	Topeka	KS N-TV
Bob Portin	Topeka	KS N-TV
William Siskins	Topeka	KTLA

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

#1

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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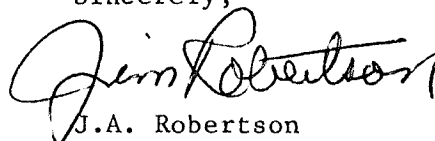
Senator Elwaine Pomeroy

-2-

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 years, with the intent to

: (a)

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~~

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

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;

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)