

Approved 2/27/85
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~xxx~~ p.m. on February 12, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud, Douville, Duncan, Fuller and Shriver were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statute's Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Viola Dodge, Kansas Agri-Women
Ruby Dean, Kansas Agri-Women
Joan Strickler, Kansas Advocacy & Protective Service for Developmentally Disabled

Jim Clark, Kansas County and District Attorneys Association, presented two bill requests. The first one involves changing the money amounts which determine Class D and Class E felonies. See Attachment No. 1.

A motion was made by Representative Teagarden and seconded by Representative Buehler to introduce this proposal as a bill. The motion carried.

The second proposal relates to hearsay evidence in preliminary examinations concerning criminal procedure. It involves a change in paragraph (3) which is shown in Attachment No. 2.

Representative Whiteman made a motion to introduce this proposal as a bill. It was seconded by Representative O'Neal and carried.

The Chairman introduced Viola Dodge and Ruby Dean, both with Kansas Agri-Women, who presented the Uniform Marital Property Act as shown in Attachment No. 3. This act would establish shared property rights of spouses during a marriage rather than by court order in event of a divorce or by statutorily sanctioned transfer at the death of a spouse.

Representative Wagnon made a motion to introduce this as a bill and Representative Buehler seconded it. The motion carried.

Representative Whiteman presented the following four bill requests: 1.) allow fines to be imposed on juvenile offenders; 2.) a statute which would make it a juvenile offense to escape from court order placement; 3.) a statute that would change reports of truancies from the SRS back to the courts; and 4.) a statute that says no one shall do private social work without a masters in social work.

Representative Whiteman made a motion to introduce #1 on fines as a bill. It was seconded by Representative Solbach and the motion carried.

A motion was made for #2 to be introduced as a bill by Representative Whiteman. It was seconded by Representative Teagarden and the motion carried.

Representative Buehler made a motion to introduce #3 as a bill and it was seconded by Representative Whiteman. The motion carried.

The Chairman decided to hold #4 proposal so the committee had more time to study it.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~a.m.~~^{xxx} p.m. on February 12, 1985.

Representative Solbach presented a request for a bill that would set up a civil penalty for failure to buckle a seatbelt. The bill would provide that insurance companies could sale automobile insurance that would cover a person when he or she was wearing a seatbelt, which would be cheaper than any other kind of insurance; or they could sale a more expensive kind of insurance which would cover someone notwearing a seatbelt. If a person only had the seatbelt wearing insurance and was in an accident, the court would reduce the recovery amount by 15 percent. Therefore, a person would know that if he or she didn't put on a seatbelt, 15 percent of the recovery amount would automatically be reduced. Representative Solbach said that at the time a person bought insurance, both kinds would have to be offered and it would be made clear to everyone that the insurance which covered you without a seatbelt was much more expensive.

It was moved by Representative Buehler and seconded by Representative Solbach to introduce this proposal as a bill. The motion carried.

HB 2065 - Concerning state institutions for the mentally retarded; relating to confidentiality of records.

Joan Strickler, Kansas Advocacy & Protective Service for Developmentally Disabled, made a statement concerning this bill as shown in Attachment No. 4.

The Chairman announced that Representative Douville would present his proposal relating to children and parents' lawsuits tomorrow.

The meeting was adjourned at 4:10 p.m.

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

December 14, 1984

PROPOSED AMENDMENT TO 1984 SESSION LAWS, CH.119, SEC. 2

Sec. 2. K.S.A. 21-3701 is hereby amended to read as follows: 21-3701. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (a) Obtaining or exerting unauthorized control over property; or
- (b) Obtaining by deception control over property; or
- (c) Obtaining by threat control over property; or
- (d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of \$150 or more but less than \$3,000 is a class E felony. Theft of property of the value of \$3,000 or more is a class D felony. Theft of property of the value of less than \$150 is a class A misdemeanor, except that theft of property of the value of less than \$150 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of theft two or more times.

Nothing herein shall prohibit the removal in a

Attachment No. 1
House Judiciary
February 12, 1985

lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

COMMENT:

Under present law a person convicted the first time of theft in any amount more than \$150 is guilty of a class E felony. The presumptive sentence is probation. Even if the Court denies probation, the prison term is a minimum of one year and a maximum of two to five years. The defendant would normally be paroled after serving about ten months.

In cases involving a very large theft, e.g., \$50,000 or \$100,000 or more, the punishment does not fit the crime. The proposed amendment would make theft of \$3,000 or more a class D felony, punishable by a minimum of one to three years and a maximum of five to ten years.

Dennis W. Moore
District Attorney

AN ACT concerning criminal procedure; relating to preliminary examinations; amending K.S.A. 22-2902 and repealing the existing section.

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

Section 1. K.S.A. 22-2902 is hereby amended to read as follows:

22-2902. Preliminary examination. (1) Every person arrested on a warrant charging a felony or served with a summons charging a felony shall have a right to a preliminary examination before a magistrate, unless such warrant has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within ten (10) days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and the ~~witnesses~~ **evidence** shall be examined in said defendant's presence. **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.** The defendant's voluntary absence after the preliminary examination has been begun in said defendant's presence shall not prevent the continuation of the examination. The defendant shall have the right to cross examine witnesses against the defendant and introduce evidence in his or her own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant the magistrate shall order the defendant bound over to the district judge or associate district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant.

(4) If the defendant waives preliminary examination the magistrate shall order the defendant bound over to the district judge or associate district judge having jurisdiction to try the case.

(5) Any judge of the district court may conduct a preliminary examination, and a district judge or associate district judge may preside at the trial of any defendant of any defendant, even though such judge presided at the preliminary examination of such defendant.

(6) The complaint or information, as filed by the prosecuting attorney pursuant to K.S.A. 22-2905, as amended, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or **nolo contendere**, they shall notify the district court of their agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210.

(7) The district judge or associate district judge, when conducting the preliminary examination, shall have the discretion to conduct arraignment at the conclusion of the preliminary examination.

Section 2. K.S.A. 22-2902 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

with respect to
UNIFORM MARITAL PROPERTY ACT

presented by

Viola Dodge
Kansas Agri-Women

to

House Judiciary Committee

Rep. Joe Knopp, Chairman

February 12, 1985

I would like to thank you, within your busy schedule, for allowing me to make this presentation.

I am Viola Dodge of Olsburg, Kansas and I represent the Kansas Agri-Women. On behalf of my organization I want to encourage you to introduce legislation to adopt the "Uniform Marital Property Act" in Kansas.

What is the "Uniform Marital Property Act"? The thrust of this act is establish shared property rights of spouses during their marriage rather than by court order in event of a divorce or by statutorily sanctioned transfer at the death of a spouse. In my own words it means that all property acquired during a marriage is marital property except that which is owned before marriage or that which is inherited.

The National Conference of Commissioners on Uniform State Laws has worked four years in developing this act and in the summer of 1983 it was approved and recommended for adoption by the 50 states. This national commission has been in existence since 1890 and has developed among other things the Uniform Commercial Code. Every state is represented on this commission and Kansas has been an active participant for 60 years. The chairman of this and the senate Judiciary committee are members. Glee Smith, Larned, Kansas has served on this commission for 20 years and is presently on the review committee for this act.

In the spring of 1984 the Uniform Marital Property Act was accepted by the American Bar Association.

This act has already been adopted by the state of Wisconsin and it will go into effect there on January 1, 1986. It is being considered in the states of Colorado, Michigan, Minnesota, Indiana, South Carolina, Connecticut, and New York.

There is a need for more uniform marital laws in the United States. It is not uncommon for families to move and live in several different states during their marriage yet the laws dealing with marital property are different in each. The Uniform Marital Property Act adopts the principal of a uniform division of property. It has been said that this act is more nearly like Kansas law than any of the other states so the changes would not be too great.

What would the "Uniform Marital Property Act" do?

1. It would recognize that both spouses make equal but different contributions to a marriage.

Attachment No. 3
House Judiciary
February 12, 1985

2. All property is marital property except that which you inherit or own before marriage.

3. Spouses can choose how they wish to own both real and personal property. They can keep individual property separate or give each other ownership or legally hold as ours assets acquired during marriage. This includes land, livestock, equipment, home, growing and stored crops, insurance, bank accounts, retirement funds and etc. Each would have an undivided $\frac{1}{2}$ interest in marital property.

4. Spouses could contract with one another in pre or post-marital written agreements. This is already recognized under Kansas Law.

5. Title would no longer determine the ownership of marital property however it would govern management and control. Joint title would be joint management and control. Property titled husband or wife then either could manage or control.

6. The "Uniform Marital Property Act" would allow greater flexibility in estate plans since either could will his or her interest independently of the other.

From personal experience I want to explain why I feel strongly that this act should be adopted in Kansas.

Glenn and I have always considered our farming operation to be our business. We really never thought about what was his or what was mine. A few years ago when we went to do some estate planning and make wills, we discovered that I owned nothing to bequeath except perhaps an iron skillet and a pair of sheets, everything belonged to Glenn. It didn't make any difference that my name was on the deed, that I had signed the mortgage obligation and that we had joint bank and savings accounts. Under Kansas law I could not show proof of contribution and it would become marital property only in event of divorce or as a widow.

We were told that Glenn should deed property into my name but in doing it he had to file a gift tax return. To put it mildly, I was very very unhappy. I didn't figure he was giving me anything, he only has \$120 when I married him and I had gotten up every morning to go with him to milk so that we could pay off the mortgage.

The point I am making is that Glenn and I could not do with our property what we wanted to. After 45 years of marriage we had no desire to divide our property, this 40 acres is Glenn's and this 40 is Viola's, this tractor is yours and this tractor is mine, this savings account is yours and this one is mine. We simply wanted it to be marital property but Kansas law does not recognize it as such, only if I were to divorce him.

Therefore I request that this committee introduce the "Uniform Marital Property act" so that it can be considered and studied for adoption by the Kansas Legislature.

attached: Analysis of the Uniform Marital Property Act
prepared by the Legislative Research Dept.

Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.



Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

Chairperson

*R. C. (Pete) Loux
Wichita*

TO: The House Judiciary Committee
Representative Joe Knopp, Chairperson

Vice Chairperson

*Robert Anderson
Ottawa*

FROM: Kansas Advocacy and Protective Services
for the Developmentally Disabled, Inc.
R.C. Loux, Chairperson

Secretary

*Robert Epps
Topeka*

RE: H.B. 2065

Treasurer

*Neil Benson
El Dorado*

DATE: February 12, 1985

*Rep. Rochelle Chronister
Neodesha*

*Sen. Norma Daniels
Valley Center*

*Sen. Ross O. Doyen
Concordia*

KAPS assists developmentally disabled children and adults in gaining access to the rights and services to which they are entitled. We are a private, non-profit corporation created specifically to meet the protection and advocacy requirements of the Developmental Disabilities Act. There are 54 such agencies serving our states and territories.

*Mary Hohman
Topeka*

*Harold James
Hugoton*

*Rep. Ruth Luzzati
Wichita*

*James Magg
Topeka*

*W. Patrick Russell
Topeka*

*W. H. Weber
Topeka*

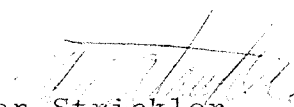
P.L. 98-527, which amends the Developmental Disabilities Act (P.L. 94-103 as amended by P.L. 95-602), contains new provisions that require State action. One of these provisions is as follows. "Assurance that the Protection and Advocacy System is able to obtain access to records of a person with developmental disabilities who reside in a facility for persons with developmental disabilities if: (a) a complaint has been received by the system from or on behalf of such person; and (b) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person. (Section 142 (a) (2) (D) (i) and (ii))

Liaison to the Governor
Robert Epps

The attached proposed amendment to H.B. 2065 is submitted for your consideration in an effort to assure that Kansas is in compliance with the new requirements.

Executive Director
Joan Strickler

Respectfully submitted,


Joan Strickler
Executive Director

Attachment No. 4
House Judiciary
February 12, 1985

0046 tion by the court that the records are necessary for the conduct of
0047 proceedings before it and are otherwise admissible in evidence.

0048 ~~(b) Violation of this section is a class C misdemeanor.~~

0049 Sec. 2. This act shall take effect and be in force from and
0050 after its publication in the statute book.

(b) The agency designated as the Developmental Disabilities Protection and Advocacy Agency pursuant to P.L. 94-103 as amended by P.L. 95-602 and P.L. 98-527 and amendments thereto shall have access to records of a person with mental retardation or other developmental disability who resides in a public or private facility for persons with developmental disabilities if:

a) a complaint has been received by the system from or on behalf of such person; and

b) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person.

delete (b) add instead (c)