

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on January 24, 1985 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Dr. Larry Wolgast, Department of Human Resources
Craig Grant, Kansas Nation Education Association
Dr. Robert Harder, Social and Rehabilitation Services
Jim Robertson, Social and Rehabilitation Services
Larry Rute, Kansas Commission on Child Support Enforcement

Senator Burke passed out a copy of a letter from an attorney in Manhattan requesting a bill be introduced concerning spousal immunity from liability for sexual battery. A copy of the letter is attached (See Attachment I). Senator Burke moved that the proposal be introduced as a committee bill. Senator Talkington seconded the motion. The motion carried.

Senator Frey noted there is a spousal rape case pending in Wichita which falls under that change in the law.

Jim Maag presented two proposals for requests to be introduced as committee bills. The first proposal will amend K.S.A. 60-2304, and the second proposal will amend K.S.A. 58-2312. Following the explanation of the proposals, Senator Talkington moved to introduce the two proposals as two committee bills. Senator Langworthy seconded the motion. The motion carried. A copy of the two proposals is attached (See Attachments II).

Senate Bill 6 - Workers' compensation, garnishment for support obligations; Re Proposal No. 50.

Dr. Larry Wolgast testified on the bill. He stated the department had no problem with this bill, and take no position on it.

Senate Bill 4 - Collection of delinquent child support by use of setoff against amounts owed obligor by state; Re Proposal No. 50

Senate Bill 5 - Enforcement of support orders from other states, arrearages and garnishment; Re Proposal No. 50

Senate Bill 6 - Workers' compensation, garnishment for support obligations; Re Proposal No. 50.

Craig Grant testified on the child support enforcement bills and stated K-NEA has an interest in enforcing child support payments for two reasons. The teachers observe the children in their class and see how they are affected when support payments don't show up, and many of their members are single parent teachers who have support orders to depend on. He urged the committee to help tighten down the enforcement of child support orders.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 24, 1985

Dr. Robert Harder appeared in support of Senate Bills 4, 5, and 6. He commented the department is very much in support of the legislation that has come out of the interim study committee.

Jim Robertson testified on Senate Bill 6. He stated the purpose of the bill is to allow for the attachment of workers' compensation benefits for the purpose of enforcing a court order for the support of a person. A copy of his testimony is attached (See Attachment III). Committee discussion followed concerning garnishing workers' compensation, restricting total amount that can be garnished and mandated laws by the federal government.

Larry Rute handed out a copy of the membership list of the Kansas Commission on Child Support (See Attachment IV). Judge Herbert Walton is chairperson, Professor Linda Elrod is vice-chairperson and Larry Rute is chairperson of their legislative committee. The hearings will be held at the Judicial Center, and the commission will be making recommendations to this committee. The Senate committee agreed to move slowly in the child support enforcement bills so they will have the benefit of the commission's input.

Senate Bill 7 - Assignment of child support when caretaker relative receives aid for dependent child; Re Proposal No. 50.

Senate Bill 8 - Income withholding to enforce child support and maintenance; Re Proposal No. 50

Larry Rute testified the commission has no problem with Senate Bills 4, 5, 6, and 7, but they do have a small problem with Senate Bill 8. The full commission will be taking up the issue for discussion. He asked the committee to defer action on this until the commission can report back with their recommendations.

Jim Robertson testified Senate Bill 5 will enable Kansas to fully reciprocate with other states concerning interstate actions to enforce support obligations across state boundaries. A copy of his testimony is attached (See Attachment V).

Jim Robertson testified Senate Bill 4 would satisfactorily comply with one of the federal mandates in the Child Support Enforcement Amendments of 1984 concerning the offset of state income tax returns as a method of collecting past due support in all Title IV-D cases. A copy of his testimony is attached (See Attachment VI).

The minutes of January 22, 1985, were approved.

The meeting adjourned.

The guest list is attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-24-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Nancy Morales	1506 Lilac	Intern for Sen. Daniels
PATRICIA HENSHALL	JUDICIAL CENTER	JUDICIAL ADMIN.
JERRY R. RUTE	112 W. 6th	Ks. Commissioner Child Support Enforcement
Jim Robertson	Topeka	SRS
Don Smith	"	Ks Bar Assn
Anthony H. Scott	Topeka	KCPA
Walter McRuff	"	Ass Credit Bldg
Jim Mason	"	KBA
Craig Grant	Lawrence	K-NEA
Lark E. Wolcott	Topeka	DHR
Wesley Russell	"	Gen Services
Michael Stetson	Lawrence	Intern for Sen. Bransford
Chuck Stevenson	Topeka	SRS
Lynn Barclay	"	Ks. Children's Serv. League
Maureen Haan	"	Capital Journal
Mary Ann Baumgardner	Lawrence	Sen. Bureau Intern
MARK BESHEARS	Topeka	IBP, inc.
KEVIN DAVIS	DOA 263 STATE Capital	
Cochyn A. Bowers	OKALOOSA	Ks Ass Dist. Ct. Clerk
Jennifer Lynn Shaw	Lawrence	Student Observer
Dave Druff	LAWRENCE KU	Legal Intern
William Selser	Topeka	ICTA
Linda Carol Woody	1112 Woodlawn Topeka	Natl Organization for Women
Robert Hahn	ST. OFF. Bldg.	SRS

Attach. VI
1/24/85

1 - 24 - 85

E I & Miller, attorneys

Union National Bank Tower, Suite 304
Manhattan, Kansas 66502
Phone 913/537-0464

CHARLES K. BALL
ANNE BURKE MILLER

January 21, 1985

Ms. Nancy Zogelman
Administrative Assistant to
Senator Paul (Bud) Burke
Room 354-E State Capitol
Topeka, Kansas 66612

Dear Nancy:

As we discussed in our phone conversation, I am sending this letter to identify my concern with regard to two crimes which were created by the legislature in 1983.

K.S.A. 21-3517 (1984 Supp) is the sexual battery statute. Section 1 of that statute provides that "sexual battery is the unlawful, intentional touching of the person of another who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another." K.S.A. 21-3518 (1984 Supp) is the aggravated sexual battery statute. Section 1 of that statute provides that aggravated sexual battery is "the unlawful, intentional application of force to the person of another who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another."

As you will note, the marital status of the victim and offender takes on great importance. I feel the underlined portions of the statutes quoted above should be deleted. I do not know whether this was a legislative oversight or not, but it does seem unusual in light of the fact that these sexual battery crimes were created in the same legislative session in which the legislature abolished spousal immunity from liability for rape. See K.S.A. 21-3502 (1984 Supp). I do not feel public policy justifies maintaining "spousal immunity" from liability for sexual battery. No such immunity is accorded the simple non-sexual battery situation nor is spousal immunity available in the context of a civil action for damages for battery per the 1982 Supreme Court decision in Ebert v. Ebert, 232 Kan. 502, 656 P.2d 766.

Thanks for your consideration.

Very truly yours,


Anne Burke Miller

ABM/j11

pc/Art Thompson

1/24/85
Attch. I

Section 1. K.S.A. 58-2312 is hereby amended to read as follows:

58-2312. ~~Hereafter it shall be~~ (a) Except as provided by subsection (b), it is unlawful for any person or persons, company, corporation or bank, to contract for the payment of attorney's fees in any note, bill of exchange, bond or mortgage, given in connection with a loan made for personal, family, household or agricultural purposes. and any such Any such contract or stipulation ~~for the payment of attorney's fees to that effect shall be null and void, and that hereafter, and~~ no court in this state shall render any judgment, order or decree by which any attorney's fees shall be allowed or charged to the maker of any such promissory note, bill of exchange, bond, mortgage, or other evidence of indebtedness by way of fees, expenses, costs or otherwise: ~~Provided That in all existing mortgages wherein no amount is stipulated as attorney's fees, not more than eight percent on sums of two hundred and fifty dollars or under, and not more than five percent on all sums over two hundred and fifty dollars, shall be allowed by any court as attorney's fees: And provided further, That this act shall not apply to existing mortgages wherein any sum has been stipulated as attorney's fees.~~

(b) Any loan evidenced by a note secured by a first real estate mortgage may include a contractual agreement allowing the court to enter judgment in rem for reasonable attorney's fees incurred by the holder of the note to foreclose the mortgage.

Sec. 2. K.S.A. 58-2312 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

1/24/85
Attch. II

Section 1. K.S.A. 60-2304 is hereby amended to read as follows:

60-2304. Subject to the qualification in (5), every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state, the following articles of personal property:

. . .

(5) The books, documents, furniture, instruments, tools, implements and equipment, the breeding stock, seed grain or growing plants stock, or the other tangible means of production regularly and reasonably necessary in carrying on the person's profession, trade, business or occupation in an aggregate value not to exceed five thousand dollars. A judgment creditor may deposit the sum of five thousand dollars with the clerk of the court for payment to the defendant, which sum shall be exempt from seizure upon any attachment, execution or other process or order issued from any court in this state, and thereupon such articles shall not be exempt.

Sec. 2. K.S.A. 60-2304 is hereby repealed.

Sec. 3. This Act shall take effect and be in force from and after its publication in the statute book.

Attach. II

1-24-85

State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 6

As K.S.A. 44-514 is currently drafted, a total statutory exemption is created to prohibit the attachment of worker's compensation for any reason - including the enforcement of past due child or spousal support. The purpose of S.B. 6 is to allow for the attachment of worker's compensation benefits for the purpose of enforcing a court order for the support of a person.

The primary purpose of worker's compensation is to replace time consuming law suits in the work place so that a speedier remedy for injury is provided. If traditional court methods were used to compensate the worker, the proceeds of any judgment obtained would not be exempt from attachment. Since the obligation to support one's dependents continues despite any disability, it is not sound reasoning to keep the tools for enforcement from children in need of support. If the obligor's ability to pay support is diminished because of injury, the court order can be reduced.

Exemption statutes such as the one for worker's compensation have often been found invalid by the courts when the enforcement of support orders are in issue.

In the Kansas Supreme Court case of Mahone v. Mahone 213 Kan 346, the court determined that "Accumulated funds presently due and owing from the Kansas Public Employees Retirement System to a member may be reached to satisfy child support payments due under a decree of divorce. In such case the statutory exemption provided by K.S.A. 74-4923 is not applicable."

The court also states that exemption statutes are intended to protect the person and his/her dependents from the claims of creditors which might take away from them all means of support. "Stated in another way, it was not the legislative intention to make the Kansas Public Employees Retirement System a haven for a runaway father to escape his obligation to support his minor children." The court adds, "The denial of relief to the minor children in cases such as this might well cast upon the public the burden of supporting children and relieve him (the obligor) and his property of that obligation."

The Kansas Supreme Court in Blankenship v. Blankenship 19 Kan 159 and Johnson v. Johnson 66 Kan 546 held that the claim of an ex-wife for alimony can be enforced as a lien against a husband's homestead despite the statutory homestead exemption.

The majority of other states' exemption statutes or case law provide an exception for the purpose of enforcing a support order. Several states have waived or overruled the exemption against the attachment of worker's compensation benefits for child support enforcement. (New Jersey - 235 A 2d 476; Oregon - 487 P 2d 1164, and Michigan among others). Even in the state of Mississippi, a statute exempting life insurance policies from garnishment was found not applicable to proceedings to collect past-due alimony and child support. The court states in Bonds v. Bonds (Miss Sup Ct. 1/27/82) "Even though exemption statutes are to be liberally construed to effectuate their purposes, this liberal interpretation must yield when the subject of the garnishment is for child support and alimony."

1/24/85
Atch. III

In Kansas, Unemployment Compensation benefits enjoyed the same exemption from attachment as worker's compensation. However, in 1982 this legislature enacted statutory waiver of that exemption for the enforcement of support.

In summary, a statutory waiver of the exemption found in K.S.A. 44-514 is needed to insure that legally and morally responsible parents provide for the support of their children. Consequently, SRS supports the enactment of this legislation.

Attch. III

KANSAS COMMISSION ON CHILD SUPPORT
Members

- Ms. Aileen Whitfill, Executive Assistant
Policy and Program Development
Social and Rehabilitation Services
State Office Building, Room 603-N
Topeka, Kansas 66612

Agency
- Mr. Charles Stevenson, Commissioner
Administrative Services
Social and Rehabilitation Services
State Office Building, Room 603-N
Topeka, Kansas 66612

Agency
- Professor Linda Elrod
Washburn Law School
1700 SW College
Topeka, Kansas 66604

Legal Profession
- Dr. Howard Schwartz
Judicial Administrator
Unified Judicial Department
Kansas Judicial Center
Topeka, Kansas 66612

Judicial System
- The Honorable Herbert Walton
10th Judicial District
Johnson County Courthouse
Olathe, Kansas 66061

Judicial System
- The Honorable James Buchele
Judge, Shawnee County
Shawnee County Courthouse
200 East Seventh Street
Topeka, Kansas 66603

Judicial System
- The Honorable Tracy Klinginsmith
District Court Judge
Jackson County Courthouse
Holton, Kansas 66436

Judicial System
- Ms. Peggy Browning
Commission on Equal Status of Women (Wichita)
7077 E. Central
Wichita, Kansas 67206

Women's Advocate
- Ms. Diane Musbaum, Administrator
Junction City District Court
P. O. Box 1147
Junction City, Kansas 66441

Judicial System

1/24/85
Attach. IV

The Honorable Robert T. Stephan
Attorney General
Judicial Center, 2nd Floor
Topeka, Kansas 66612

Judicial System

Mr. Larry Rute
Kansas Legal Services, Inc.
112 West Sixth, Room 202
Topeka, Kansas 66603

Legal Aid

Ms. Lynn Barclay
Perry, Kansas 66073

Children's Advocate

The Honorable Norma L. Daniels
Senator, District 31
130 Miles Avenue
Valley Center, Kansas 67147

Legislative Member

The Honorable Vic Miller
Representative, District 53
1174 Fillmore
Topeka, Kansas 66604

Ex-Legislature-citizen

Ms. Evelyn Leat
911 North 70th Street
Kansas City, Kansas 66112

Custodial Parent

Mr. Woody Houseman
2913 SE Ohio
Topeka, Kansas 66605

Noncustodial Parent

The Honorable Robert J. Vancrum
Representative, District 29
9004 W. 104th Street
Overland Park, Kansas 66212

Legislative Member

The Honorable Joan Wagnon
Representative, District 55
1606 Boswell
Topeka, Kansas 66604

Legislative Member

The Honorable Robert G. Frey
Senator, District 38
451 Harold Blvd.
Liberal, Kansas 67901

Legislative Member

State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 5

The purpose of this bill is to enable Kansas to fully reciprocate with other states concerning interstate actions to enforce support obligations across state boundaries. In addition, federal mandates found in the Child Support Enforcement Amendments of 1984 (P.L. 98-378; 45 CFR 301-305 and 307) require the states to enact or amend legislation which facilitates interstate support enforcement. As a method of encouraging interstate cooperation, the federal government has adopted procedures to pay the states an incentive for collections of support made for other states or individuals in other states.

Consequently, an amendment is suggested to the Kansas Uniform Reciprocal Enforcement of Support Act (URESAs) which would allow Kansas to fully reciprocate with other states by adding to the definition of "duty of support" in K.S.A. 23-452. Currently, the model URESA code and the laws of all other states allows for the collection of arrearages which have accrued on the basis of another state's support order. Kansas is the only exception to nationwide uniformity in this respect. To bring the State of Kansas in accord with all other states, an amendment is suggested on lines 33-35 which would allow the Kansas courts the ability to enforce, in Kansas, the past due support owed because of another state's order of support.

Another amendment to the Kansas garnishment statute (K.S.A. 60-2310) is suggested, which would allow for the enforcement of a Kansas URESA judgment by garnishment even though support is assigned to another state. Kansas statutes prohibit the filing of garnishments to enforce debts which have been assigned to a third party. An exception to this general rule is made in K.S.A. 60-2310(d) which allows SRS to file garnishments to enforce assigned support rights. However, this exception must be expanded to include support debts assigned to other states pursuant to Title IV-D of the federal social security act, if we are to be able to fully enforce a Kansas judgment to pay support which is established at the request of another state. Once again, other states routinely use garnishments to enforce URESA orders established at the request of the State of Kansas. Therefore, to fully reciprocate, our law should be amended.

1/24/85
Attach. II

State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 4

This bill would satisfactorily comply with one of the federal mandates in the Child Support Enforcement Amendments of 1984 (P.L. 98-378; 45 CFR 301-305 and 307) concerning the offset of state income tax returns as a method of collecting past due support in all Title IV-D cases. 45 CFR 303.102 specifically requires the states to establish and use an income tax refund offset law for collecting past due support in all appropriate IV-D cases, including ADC, non-ADC, and foster care maintenance cases regardless of whether they are intrastate cases or interstate cases referred from other states. The federal regulations also require the state IV-D agency to establish procedures to ensure that amounts referred for setoff have been verified and are accurate.

Since Kansas currently has an exemplary setoff law (K.S.A. 75-6201 et seq) which satisfies most of the federally required elements which must be a part of setoff legislation (due process, prior notice, appeal rights, and a joint return refund process), the only required amendments to the existing law would be to expand the definition of "debtor" and "debt" to allow for the use of setoff in non-ADC and interstate IV-D cases.

Consequently, an amendment is suggested on lines 25-31 which changes the definition of "debtor" to any person who owes a debt to an individual or agency of another state who receives assistance in collecting support pursuant to title IV-D of the federal social security act.

The definition of "debt" is amended on lines 37-43 to make it clear that non-ADC support debts and title IV-D support debts owed other states are considered debts owed SRS and are, therefore, collectable by setoff.

1/24/85
Attach. VI