

Approved April 1, 1986

Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Vice Chairman Robert Wunsch at
Chairperson

3:30 ~~xxxx~~ a.m./p.m. on March 18, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Adam, Bideau, Cloud, Duncan, Harper, Knopp, Luzzati were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department

Mike Heim, Legislative Research Department

Mary Torrence, Revisor of Statutes Office

Jan Sims, Committee Secretary

Conferees appearing before the committee:

Patricia Henshall, Judicial Administrator's Office

Marjorie Van Buren, Judicial Administrator's Office

Chuck Simmons, General Counsel, Department of Corrections

Matt Lynch, Judicial Council

Arno Winscheffel, Disciplinary Administrator, Kansas Supreme Court

Duane Johnson, State Librarian

SB 419 - An act concerning crimes and punishments; relating to sentencing.

Rep. Wunsch asked Mike Heim to give the committee a review of the background of this bill. He said this was the subject of an interim study and came about because of a dispute between a judge in Wichita and the Department of Corrections concerning a person placed in a community corrections program. The question arose as to whether the person remained under the continuing jurisdiction of the sentencing court or in the custody of the Secretary of Corrections. The bill adds placing a person in a community corrections program to the laundry list of dispositional alternatives available to the court and removes that assignment from the area of probation. The bill also gives arrest powers to community corrections officers. He stated that in December the Supreme Court handed down a decision (State v. Fowler) holding these same provisions and in essence this bill would codify that case law.

Patricia Henshall of the Judicial Administrator's Office appeared in favor of SB 419. She stated that it was her understanding that the staff of her office had been in contact with the Court Services Officers and that they had no problems with the provisions of this bill.

Marjorie Van Buren of the Judicial Administrator's Office also appeared in support of this bill. She indicated that the Community Corrections Officers already exist and are in the field currently and it was her understanding that the Court Service Officers understood that this bill would not increase their duties but the extra duties would apply to the community corrections officers.

Chuck Simmons, General Counsel of the Department of Corrections appeared before the committee and stated that the Department feels that this problem has been addressed in State v. Fowler but they have no problem with supporting this bill if it is felt to be necessary. The problem has only arisen with one judge in Wichita, but he does have a full docket so it is possible that it could have arisen again without the Supreme Court decision.

SB 477 - An act concerning attorneys; relating to a client's money.

Matt Lynch of the Judicial Council appeared before the committee in support of SB 477. (Attachment 1). He introduced Arno Winscheffel, Disciplinary Administrator for the Kansas Supreme Court. Mr. Winscheffel stated that this bill deletes K.S.A. 7-119 and 7-120. He said that in the situation where an attorney has taken a large sum of money from a client he has an unfair advantage of being able to plead guilty to a misdemeanor under these statutes and then plead double jeopardy to theft charges on the same incident. He stated that in addition to the theft statutes in place the Supreme Court disciplinary rules also cover this situation thereby making 7-119 and 7-120 completely unnecessary.

As previously noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-s, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on March 18, 1986.

SB 570 - An act concerning crimes and punishment; relating to the intent to permanently deprive a library of certain materials.

Duane Johnson, State Librarian appeared before the committee in support of this bill (Attachment 2). He said this bill would help libraries recover materials held out by patrons long after the due date. This is an alternative to the Library Materials Protection Act originally sought by the librarians. Mr. Johnson does not see the provisions of the bill being used as the basis for prosecution but rather as the basis for the assertion of a library's claim for recovery notwithstanding the way the bill is currently worded. There was discussion relative to the provisions being applicable only in misdemeanor cases and the difficulty libraries have in obtaining cooperation from law enforcement agencies currently. Mr. Johnson offered an amendment contained in a balloon (Attachment 3).

Rep. Fuller moved to report SB 477 favorably and place same on the consent calendar. Seconded by Rep. Wagnon. Motion carried on a voice vote.

Rep. Solbach moved to amend SB 570 as provided in the balloon presented by Mr. Johnson. Seconded by Rep. Whiteman. Motion carried on a voice vote. Rep. Snowbarger moved to amend line 105 to provide for three days notice instead of two days. Seconded by Rep. Solbach. Motion carried on a voice vote. Rep. Solbach moved to report SB 570 as amended favorable for passage. Seconded by Rep. Whiteman. Motion carried on a voice vote.

The Vice Chairman adjourned the meeting at 4:35.

7-119. Refusal to account for money; penalty. An attorney who receives the money or property of his or her client in the course of professional business, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor.

History: G.S. 1868, ch. 11, § 17; Oct. 31; R.S. 1923, § 7-119.

21-3701. Theft. 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 is a class E 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 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.

History: L. 1969, ch. 180, § 21-3701; L. 1972, ch. 116, § 1; L. 1978, ch. 120, § 29; L. 1984, ch. 119, § 2; May 17.

7-120. Effect of claim of lien. Where the attorney claims to be entitled to a lien upon the money or property, he or she is not

liable to the penalties of K.S.A. 7-119, until the person demanding the money proffers sufficient security for payment of the amount of the attorney's claim when it is legally ascertained.

History: G.S. 1868, ch. 11, § 18; Oct. 31; R.S. 1923, § 7-120.

21-3705. Unlawful deprivation of property. Unlawful deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of his property.

Unlawful deprivation of property is a class A misdemeanor.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

History: L. 1969, ch. 180, § 21-3705; L. 1972, ch. 116, § 2; July 1.

Attachment!
House Judiciary
March 18 1980

March 18, 1986

TO: Judiciary Committee of the House
 Joe Knopp, Chairperson
 Robert S. Wunch, Vice-Chairperson

RE: Senate Bill 570

FROM: Duane F. Johnson, State Library

1. S.B. 570 would amend K.S.A. 21-3702, on prima facie evidence of intent to permanently deprive an owner of property, to include library materials within the intent of the statute.
2. The objective of the legislation is to strengthen the position of the library administration to recover long overdue library materials, and in instances of extreme abuse on the part of a borrower, to establish a basis for prosecution.
3. On the basis of the amendment proposed in the balloon, the prima facie basis of intent would extend only to a misdemeanor complaint.
4. A library materials protection act was requested by the State Library, the Kansas Library Network Board, and the Kansas Library Association.
5. The State Library endorses S.B. 570 as amended.

*Attachment 2
House Judiciary
March 18, 1986*

0047 the library issuing the card.

3 (b) Library theft is:

0049 (1) The removal of any library material from the premises of a
0050 library without authority to do so;

0051 (2) the concealment of any library material upon one's person
0052 or among one's belongings while still on the premises of a library
0053 and in a manner that the library material is not visible through
0054 ordinary observation although there may be some notice of its
0055 presence; and the removal of library material beyond the last
0056 point on the premises of the library at which library material may
0057 be borrowed in accordance with procedures established by the
0058 library for the borrowing of library material;

0059 (3) borrowing or attempting to borrow any library material
0060 from a library by:

0061 (i) Use of a library card issued to another without the other's
0062 consent;

0063 (ii) use of a library card knowing that it is revoked, cancelled
0064 or expired; or

0065 (iii) use of a library card knowing that it is falsely made,
0066 counterfeit or materially altered.

0067 (4) failure to return library material borrowed pursuant to an
0068 agreement with or procedure established by the library for the
0069 return of the library material within 30 days after receiving
0070 written notice by registered mail from the library requesting the
0071 return of the library material; or

0072 (5) failure to return library material borrowed through the
0073 Kansas interlibrary lending network within 30 days after receiv-
0074 ing written notice by registered mail from the loaning library
0075 demanding the return of the library material.

0076 (c) Theft of library material of the value of \$150 or more is a
0077 class E felony. Theft of library material of the value of less than
0078 \$150 is a class A misdemeanor.

0079 Section 1. K.S.A. 21-3702 is hereby amended to read as fol-
0080 lows: 21-3702. (1) In any prosecution under this article, the
0081 following shall be prima facie evidence of intent to permanently
0082 deprive the owner or lessor of property of the possession, use or
0083 benefit thereof:

*Attachment 3
Boysse Coductary
March 18 1986*

0084 (a) The giving of a false identification or fictitious name,
 ; address or place of employment at the time of obtaining control
 0086 over the property; or

OR

0087 (b) the failure of a person who leases or rents personal
 0088 property to return the same within ~~ten~~ (10) 10 days after the date
 0089 set forth in the lease or rental agreement for the return of said
 0090 the property, if notice is given to the person renting or leasing
 0091 said the property to return said the property within seven (7)
 0092 days after receipt of said the notice, in which case the subse-
 0093 quent return of said the property within the seven-day period
 0094 shall exempt such transaction from consideration as prima facie
 0095 evidence as provided in this section; or

0096 ~~(c) the failure of a person who borrows a book or other~~
 0097 ~~library material to return same within 30 days after receiving~~
 0098 ~~notice from the library requesting the return of the library~~
 0099 ~~material in which case the subsequent return of the material~~
 0100 ~~within the 30-day period shall exempt such transaction from~~
 0101 ~~consideration as prima facie evidence as provided in this sec-~~
 0102 ~~tion.~~

0103 ~~(2) The word "notice" as used herein shall be construed to~~
 0104 ~~mean notice in writing and such notice in writing will be~~ (3)
 0105 ~~presumed to have been given two (2) days following deposit of~~
 0106 ~~said the notice as registered or certified matter in the United~~
 0107 ~~States mail, addressed to such person who has leased or rented~~
 0108 ~~said the personal property or borrowed the library material at~~
 0109 ~~the address as it appears in the information supplied by him or~~
 0110 ~~her such person at the time of such leasing or, renting or~~
 0111 ~~borrowing, or his or her to such person's last known address.~~

0112 Sec. 2. K.S.A. 21-3702 is hereby repealed.

0113 Sec. 3. This act shall take effect and be in force from and
 0114 after its publication in the statute book.

(2) In any prosecution for a misdemeanor under K.S.A. 21-3701 and amendments thereto in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or