

Approved February 4, 1986
Date

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 28, 1986 in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Mary Hack, Office of Revisor of Statutes

Conferees appearing before the committee:

Louis Mata, Wyandotte County Legal Services
Professor David Ryan, Washburn University School of Law
Representative Sandy Duncan
Ron Smith, Kansas Bar Association

Louis Mata, Wyandotte County Legal Services, presented a request for a bill concerning the protection from abuse act to simplify and strengthen a restraining order or protection order (See Attachment I).

The chairman announced a 27 minute film on medical malpractice will be shown tomorrow, January 29, in Room 519-S.

Senate Bill 415 - Application of act for judicial review and civil enforcement of agency actions to political subdivisions.

Professor David Ryan, Washburn University School of Law, who served on the Administrative Law Committee of the Judicial Council, explained this bill amends the administrative judicial review act which was adopted two years ago. It established for all state appeals a uniform appeal to court, and it has worked out to date by and large very well. This bill expands from the state level agencies to local units of government. He said accessibility to court can get unduly complicated, which is wrong, and this bill will eliminate that. The opposition's greatest concern is that this will open the flood gates of litigation in this state. Professor Ryan stated this bill does not change the scope of review in court. The act codifies the current very limited scope of review. The bill is to the benefit of local units of government.

Representative Sandy Duncan, a member of the Administrative Law Committee of the Judicial Council, testified that two years ago the League of Kansas Municipalities stated they needed a couple of years to go out and check with the municipalities, and when they have them educated, there would be no problem. Representative Duncan said we have waited the two years that they had requested. He said the basic concept is to want to protect the right of citizens to have their right to court. It does not expand the scope of review as the opponents may testify tomorrow. Committee discussion with him followed.

Ron Smith, Kansas Bar Association, stated the bar is in support of the bill. Copies of Mr. Smith's handouts are attached (See Attachments II, III).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on January 28, 19 86

Senate Bill 415 continued

Considerable committee discussion followed with Professor Ryan concerning Section 7 of the bill relating to sufficient evidence and substantial evidence. Professor Ryan said he will bring this matter to the attention of the administrative law committee which meets this Thursday.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: Jan. 28, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Richard Funk	Topeka	KASB
Joe Furgan	Topeka	KASB
Elizabeth E. Taylor	"	RADVP
Luis Mata	Kansas City, Ks	Wyandotte Legal Services
Matt Lynch	Topeka	Judicial Council
Patricia HENSHALL	TOPEKA	OJA
Brian J. Molise	"	V.C.C.
Kenn Bosch	Lawrence	KD Trial Lawyers
Tom Bell	Topeka	KHA
Purd. D. J. Ryan	Topeka	Jud Council
SANDY DUNCAN		
Steven Wiseman	Topeka	Ks Assn of Counties
Judy Anderson	Wichita	City of Wichita
John Smith	Topeka	KBA
Jim Cook	Topeka	Ks NEA
John Kamp	Topeka	ZKM

Attach. IV

A bill is needed that would simplify and strengthen the process by which a victim of domestic violence may obtain a restraining order or protection order.

1. The Act needs to be simplified and a procedure set out so that a victim may petition for a protection order herself without the assistance of counsel. The present statute is so complicated that a victim is essentially barred from utilizing the Act without legal representation.

A) To make the Act capable of pro se representation, the forms need to be made available at the Clerk of the District Court with instructions for the petitioner. Such forms have been developed in other states, Missouri and Kentucky are good examples.

B) The preamble to the Act would need to be amended so that the District Courts, and their personnel would be mandated with the obligation to affirmatively assist the victims process the necessary forms, get temporary orders signed, final hearing scheduled and effect service on the respondent.

2. Practical problems have arisen with some of the current provisions and requirements of the Act.

A) The current jurisdictional requirement that the abuser or respondent have "legal access to the residence" should be stricken. This requirement has barred a number of victims from the use of the Act as technically the abuser may not have legal access.

B) The requirement that a hearing must be held within 10 days should be amended to allow for a longer time for the respondent to be served and answer to the petition. While included for due process reasons, no such requirement is in place for ex-parte temporary orders in divorce cases. A better time limit would be from 30-40 days for a hearing be scheduled. If a respondent wishes to contest the Order prior to that time, he/she could seek a modification of the Order. An expedited modification procedure could be set out. Many times, the Sheriff's Department is unable to secure service on the respondent prior to the 10-day hearing date and the case simply gets continued.

C) It would also be helpful if there would be statutory provision allowing for the extension of the protection order until such time as a final hearing may be held.

D) A need to allow a court to extend the protection order beyond the one year limit would be in order. Easily the time limitation of one year could remain with another one year extension possible upon the application of the petitioner.

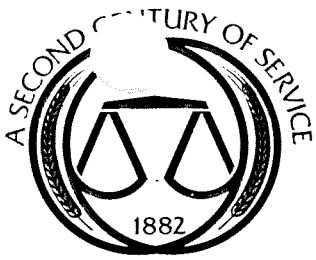
E) The Act needs to spell out that the protection order will remain in effect or be valid until modified or dismissed by the Court. This will eliminate judgement calls by police officers whether an order is valid or not when by coercion or trick the respondent has gained access to a residence.

F) The 60 day time limitation for child support should be stricken so that support is available for the duration of the Order.

3. It is recommended that in addition to the civil contempt provision for violation of the restraining order and the criminal trespass statute, a civil penalty could be assessed against a respondent for violating a restraining order. The impact would be to further strengthen the Court's authority upon a finding that the Order has been violated. First violation could result in a \$200.00 penalty. Second violation: \$400.00. One-half of the penalties collected could go to defray the additional administrative costs of the District Court system. One-half of the penalties collected could go to domestic violence programs for their services to victims. The hope would be that respondents would think twice before violating the restraining order. Similar civil penalties have been authorized by the legislature, eg. Consumer Protection Act.

Attch. I

S. Judiciary
1/28/86



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1-28-86

SB 415
Senate Judiciary Committee
January 21, 1986

Mr. Chairman. Members of the committee. I am Ron Smith, Legislative Counsel, Kansas Bar Association.

KBA has supported the Kansas Administrative Procedures Act since its early days when Senator Pomeroy was working hard for passage.

SB 415 extends to local units of government the traditional concept of judicial review of administrative decisions through the required use of the Kansas Act for Judicial Review.

The legislation has the support of the Administrative Law section of KBA, which is one of our fastest growing sections. The KBA Executive Council, which is our legislative policy-making organization, supports such extension, and supports SB 415.

S. Judiciary
1/28/86
Atch. II

1-28-86

LAWRENCE A. DIMMITT
220 EAST SIXTH STREET
TOPEKA, KANSAS 66603

January 27, 1986

Mr. Ron Smith, Legislative Counsel
Kansas Bar Association
1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601

Re: Senate Bill 415

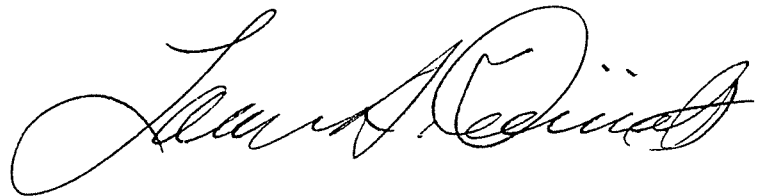
Dear Mr. Smith:

You have asked me whether the Administrative Law Section of the KBA is in favor of the passage of S.B. 415, which would extend the Act for Judicial Review and Civil Enforcement of Agency Actions to political subdivisions.

Of course there is no "single position" of all members of our Section on this legislation. However, as John Richeson, attorney from Ottawa and First Vice-President of our Section, told the Special Committee on Judiciary on August 29, 1985, our Section planned to recommend that the KBA favor extension of KAPA generally to political subdivisions. And, while there may need to be specific issues addressed, S.B. 415 seems to be a step in the direction of promoting uniformity of agency decisions and not limiting such uniformity to state agencies.

Please let me know if you have any questions regarding the above.

Very truly yours,



cc: John Richeson
Mark Hinderks
Patricia Casey

S. Judiciary
1/28/86
Attach III