

Approved March 16, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~ p.m. on March 4, 1987 in room 313-S of the Capitol.

All members were present except: Representative Peterson, who was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Mary Jane Holt, Secretary

Conferees appearing before the committee:

Teresa Craig, Lutheran Social Services, Wichita
Lynn Barclay, Kansas Children's Service League
Marjorie Van Buren, Office of Judicial Administration
Louis Mata, Wyandotte Legal Services
Cynthia Hale, Kansas Association of Domestic Violence Programs
Joyce Hart, Alliance Against Family Violence
Judy Davis, Battered Women's Shelter, Manhattan
Jim Clark, Kansas County and District Attorneys Association
Kevin Fowler, Kansas Society of Certified Public Accountants
Ralph Skoog, Kansas Trial Lawyers Association and Kansas Cable T.V.
Representative Martha Jenkins
Representative Mike O'Neal
Representative Elaine Hassler
Rich Hayse, Palmer News

Hearing on H.B. 2462-Termination of parental rights and relinquishment of child

Teresa Craig testified in support of H.B. 2462. The bill provides for safeguarding the rights of fathers of children who may be relinquished for adoption and also shortens the period of time children would remain in foster care, (see Attachment I).

Lynn Barclay testified in support of H.B. 2462. She stated the bill allows the voluntary relinquishment by an unmarried father; eliminates possible delays caused by a father's failure to appear at termination proceedings after adequate notice is given; eliminates the requirement for licensed child-placing agencies to go through a termination of parental rights proceeding if both parents have voluntarily relinquished for the purpose of adoption; and ceases requirement for notice of the adoption to be given to the natural parents if they have already voluntarily relinquished or had parental rights terminated, (see Attachment II).

The hearing was closed on H.B. 2462.

Hearing on H.B. 2463-Protection from abuse act amendments

Marjorie VanBuren submitted some amendments. In line 56 by striking the words after court and striking all of line 57. In line 84 by striking the words "the clerk of", (see Attachment III).

Louis Mata stated H.B. 2463 would greatly strengthen the statute, and offer greater protection to victims of domestic violence. He proposed changing the language in line 84 and 85 to "the court shall set the case for hearing". Also to change the words in line 56 through 59 by striking "shall explain to plaintiffs not represented by counsel the procedure for filing the petition and". He submitted letters from Loren L. Taylor, Kansas City, Kansas Police Legal Advisor; Frank E. Kohl, Leavenworth County Attorney; William M. McKeel, Leavenworth Chief of Police; and Terry L. Campbell, Sheriff of Leavenworth, (see Attachment IV).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 4, 1987

Cynthia Hale testified in support of H.B. 2463 and urged the Committee to pass the bill with the recommended changes proposed by Louis Mata.

Joyce Hart testified in support of H.B. 2463, and urged the Committee to pass this bill with the proposed changes.

Judy Davis testified in support of H.B. 2463.

The hearing was closed on H.B. 2463.

Hearing on H.B. 2534-Mandatory sentence for certain controlled substances violations

Jim Clark testified he was appearing for Clark Owens, Sedgwick County District Attorney. In Sedgwick County dealing in drugs is an economic crime, and there are no mandatory prenalities. The effect of this bill would greatly exaggerate prison over-crowding.

The hearing was closed on H.B. 2534.

Hearing on H.B. 2533-Apportionment of fault in actions for certain damages

Representative O'Neal explained the bill to the Committee.

Kevin Fowler testified this bill addresses the public policy questions relating to the comparison of multiple defendants with varying degrees of fault, ranging from simple negligence to intentional wrongdoing. The bill eliminates apparent confusion engendered by the inter-changeable use of "comparative negligence" and "comparative fault", (see Attachment V).

Ralph Skoog stated he was concerned about the definition of fault as it appears in this bill.

A motion was made by Representative Snowbarger and seconded by Representative O'Neal to report H.B. 2533 favorably for passage. The motion passed.

Hearing on H.B. 2245-Qualifications of Supreme Court Justices

The Chairman explained this bill to the Committee.

Hearing on H.B. 2259-No jury instruction on effect of findings on comparative negligence

Representative O'Neal explained in this bill the jury shall not be instructed as to the consequences of its special verdicts.

Ralph Skoog testified in opposition to H.B. 2259. The jury should not be kept out of the process.

Hearing on H.B. 2376-Division of property in divorce actions, retirement benefits

Representative Jenkins explained this bill amends K.S.A., 1986 Supp 60-1610. The amendment is on page 5, lines 170 through 172, "the present value of benefits under any pension, retirement or other deferred compensation plan covering either party, whether vested or not vested".

The hearing was closed on H.B. 2376.

Hearing on H.B. 2257-Crime of promoting obscenity, relating to television and cable television

Representative Hassler testified H.B. 2257 amends K.S.A. 1986 Supp. 21-4301 by adding television and cable television, (see Attachment VI).

Rich Hayse submitted some amendments that addresses wholesalers, (see Attachment VII).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 4, 19 87

Ralph Skoog testified in opposition to H.B. 2257.

The hearing on H.B. 2257 was closed.

The meeting was adjourned at 5:50 p.m.

The next meeting will be Thursday, February 5, 1987 at 3:30 p.m. in room
313-S.

GUEST REGISTER

DATE March 4, 1987

HOUSE JUDICIARY

NAME

ORGANIZATION

ADDRESS

Lynn Barclay

Ks. Children's Service League

Topeka

Teresa Craig

Lutheran Social Service of Ks/OK

Wichita

Jim McBride

Observer

Topeka



WICHITA OFFICE:
1855 N. HILLSIDE • WICHITA, KANSAS 67214
(316) 686-6645

HOUSE BILL 2462
TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE
BY
TERESA CRAIG, LUTHERAN SOCIAL SERVICE OF KS/OK, INC.

COMMITTEE MEMBERS:

We are in support of House Bill 2462 concerning children; relating to termination of parental rights and adoption. We believe this bill will provide for safeguarding of the rights of fathers of children who may be relinquished for adoption and also shorten the period of time children remain in foster care.

We believe the child's needs will be met if Bill 2462 is passed which gives a father a time limit within which to seek custody. Present law creates a waiting period which is at least six weeks long if the father denies paternity or refuses to sign a relinquishment. The infant child remains in foster care awaiting court hearing(s) which may be continued indefinitely if the father does not appear. The new law will limit the time in which the father must claim rights.

It is our experience that fathers refuse to sign the relinquishment forms because they are concerned that they may be billed for medical bills and/or child support. As a result, they often refuse to sign the forms and the child cannot be placed with adoptive parents for six weeks to six months depending on court hearings.

The law continues to protect the rights of fathers who would like to have custody of the child. We support the right of the father to custody of his child.

March 4, 1987

Attachment I
House Judiciary 3/4/87

KANSAS CHILDREN'S SERVICE LEAGUE

to protect,
enhance and promote
the welfare of
children
—since 1893

TESTIMONY ON HB 2462

by Lynn Barclay, Advocacy Coordinator
Kansas Children's Service League
Before House Judiciary Committee
March 4, 1987

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Vince Wells

EXECUTIVE DIRECTOR

Jerry Coppel
1365 N. Custer
P.O. Box 517
Wichita, Kansas 67201
316/942-4261

Kansas Children's Service League supports HB 2462, a bill that we requested to be introduced by this Committee. The bill would solve four problems that cause unnecessary delays in the placement of infants for adoption.

The bill would:

1. Allow voluntary relinquishment by an unmarried father.

Under current law, it appears that proceedings to terminate parental rights of a father can be avoided only if the mother voluntarily relinquishes and she is married to the father or has tried to marry him, or paternity has been established by a court. HB 2462 would amend the law to exempt from a termination of parental rights proceeding a father who is not married to the mother, who has notoriously or in writing acknowledged his paternity, and who has voluntarily relinquished or consented to the adoption of his child.

2. Eliminates possible delays caused by a father's failure to appear at termination proceedings after adequate notice is given.

Under current law, the court is directed to terminate parental rights if the alleged father or fathers fail to appear at the termination proceedings. But, perhaps because no time limits are given, some courts have continued the proceedings due to failure to appear. HB 2462 would clarify what constitutes adequate notice and would allow only one 7-day continuance for good cause.

3. Eliminates the requirement for licensed child-placing agencies to go through a termination of parental rights proceeding if both parents have voluntarily relinquished for the purpose of adoption.

KSA 59-2102 (a) appears to require that licensed child-placing agencies obtain consent of the parents and also obtain termination of parental rights under KSA 38-1129. HB 2462 would indicate that consent to the adoption may be given

Attachment II
House Judiciary 3/4/87



TESTIMONY ON HB 2462

by Lynn Barclay, Advocacy Coordinator
Kansas Children's Service League
Before House Judiciary Committee
March 4, 1987
Page 2

by SRS or a licensed child-placing agency if the rights of the parents have been legally terminated or voluntarily relinquished to the agency for the purpose of adoption and custody of the child has been legally vested in the agency.

4. Ceases requirement for notice of the adoption to be given to the natural parents if they have already voluntarily relinquished or had parental rights terminated.

KSA 59-2278 (b) currently requires that notice of the final adoption hearing be given to "all interested parties." This has been interpreted at times to mean that the natural parents must be given notice. HB 2462 would indicate that no notice of any proposed adoption of the child need be given to a natural parent if that parent's parental rights have been terminated or if that parent has voluntarily relinquished for the purpose of adoption.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612

(913) 296-2256

March 5, 1987

To: Hon. Robert S. Wunsch
Chairman
House Judiciary Committee

From: Marjorie J. Van Buren *MJB*

Re: HB 2463

The changes recommended by the proponents, and which I endorsed, are on lines 56-57 and line 84, as shown on the attached.

cc: Hon. Joan Wagnon
Legislative Research

ATTACHMENT III

0046 arouse or to satisfy the sexual desires of either the minor or the
0047 offender or both.

0048 Sec. 3. K.S.A. 1986 Supp. 60-3104 is hereby amended to read
0049 as follows: 60-3104. (a) A person may seek relief under this act or
0050 any parent of or adult residing with a minor child may seek relief
0051 under this act on behalf of the minor child by filing a verified
0052 petition with any district judge of the judicial district or with the
0053 clerk of the court, alleging abuse by another with whom the
0054 person or child resides. No docket fee shall be required for
0055 proceedings under this act.

0056 (b) ~~The clerk of the court shall explain to plaintiffs not~~
0057 ~~represented by counsel the procedure for filing the petition and~~
0058 ~~shall supply the forms for the petition and orders, which shall~~
0059 ~~be prescribed by the supreme court.~~

0060 Sec. 4. K.S.A. 1986 Supp. 60-3105 is hereby amended to read
0061 as follows: 60-3105. (a) When the court is unavailable, a verified
0062 petition, accompanied by a proposed order, may be presented to
0063 any district judge of the judicial district. The judge may grant
0064 relief in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A.
0065 60-3107 and amendments thereto, or any combination thereof, if
0066 the judge deems it necessary to protect the plaintiff or minor
0067 child or children from abuse. An emergency order pursuant to
0068 this subsection may be granted *ex parte*. Immediate and present
0069 danger of abuse to the plaintiff or minor child or children shall
0070 constitute good cause for the entry of the emergency order.

0071 (b) An emergency order issued under subsection (a) shall
0072 expire when the court is available or within 72 hours, whichever
0073 occurs first. At that time, the plaintiff may seek a temporary order
0074 from the court.

0075 (c) The judge shall note on the petition and any order
0076 granted, including any documentation in support thereof, the
0077 filing date, together with the judge's signature, and shall deliver
0078 them to the clerk of the court on the next day of the resumption of
0079 business of the court.

0080 Sec. 5. K.S.A. 60-3106 is hereby amended to read as follows:
0081 60-3106. (a) Within ~~ten (10)~~ 30 days of the filing of a petition
0082 under this act a hearing shall be held at which the plaintiff must

0083 prove the allegation of abuse by a preponderance of the evi-
0084 dence. ~~Upon the filing of the petition, the clerk of the court shall~~
0085 ~~set the case for hearing. At the hearing, the court shall advise the~~
0086 ~~defendant parties of the right to be represented by counsel.~~

0087 (b) Prior to the hearing on the petition and upon a finding of
0088 good cause shown, the court on motion of a party may enter such
0089 temporary relief orders in accordance with ~~paragraphs (1), (2) or~~
0090 ~~(5) of subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107 and~~
0091 amendments thereto, or any combination thereof, as it deems
0092 necessary to protect the plaintiff or minor children from abuse.
0093 Temporary orders may be granted *ex parte*. Immediate and
0094 present danger of abuse to the plaintiff or minor children shall
0095 constitute good cause for purposes of this section.

0096 (c) If a hearing under subsection (a) is continued ~~by consent~~
0097 ~~of the parties~~, the court may make or extend such temporary
0098 orders under subsection (b) as it deems necessary.

0099 Sec. 6. K.S.A. 60-3107 is hereby amended to read as follows:
0100 60-3107. (a) The court shall be empowered to approve any
0101 consent agreement to bring about a cessation of abuse of the
0102 plaintiff or minor children or grant any of the following orders:
0103 (1) Directing the defendant to refrain from abusing the
0104 plaintiff or minor children.
0105 (2) Granting possession of the residence or household to a
0106 party to the exclusion of the other party, subject to the limitation
0107 of subsection (c).

0108 (3) Requiring a party to provide suitable, alternate housing
0109 for such party's spouse and any minor children of the parties.

0110 (4) Awarding temporary custody and establishing temporary
0111 visitation rights with regard to minor children.

0112 (5) Ordering a law enforcement officer to evict a party from
0113 the residence or household.

0114 (6) Ordering support payments by a party for the support of a
0115 party's minor child or a party's spouse.

0116 (7) Awarding costs and attorney fees to either party.

0117 (8) Making provision for the possession of personal property
0118 of the parties and ordering a law enforcement officer to assist in
0119 securing possession of that property, if necessary.



City of Kansas City, Kansas

DEPARTMENT OF POLICE

March 2, 1987

Mr. Luis Mata
Director
Wyandotte-Leavenworth Legal
Services
905 North 7th Street
Kansas City, Kansas 66101

Re: Proposed Amendments to the Protection from Abuse Act

Dear Mr. Mata:

I have reviewed the proposed House Bill No. 2463, which amends the Kansas Protection from Abuse Act, and I believe that the proposed changes would greatly strengthen the statute and offer greater protection to victims of domestic violence.

For quite some time we have been needing to remove the jurisdictional requirement of "legal access to the residence" and to lengthen the final hearing date from 10 days to 20 or 30 days, since 10 days is not sufficient time to achieve service over most of the defendants.

We are also needing to facilitate access to the courts for the victims, and the proposed amendment would greatly enhance that goal by making the forms available to counsel or to victims who are going pro se. You should know that out of 54 Protection from Abuse Cases that were served upon the Chief of Police in 1986, 36 were handled by attorneys from your office, and only 18 from the rest of the private bar. Even though your office prosecuted 2/3 of all the cases in 1986, this represented an improvement over past years, when almost no Protection from Abuse cases were handled by the private bar.

As you know, attacking the problem of domestic violence is no simple assignment. Legal Aid offices, police departments, battered women shelters, and the courts must work together to help reduce injuries to the victims and their children. This proposed House Bill No. 2463 will also become part of the solution if approved by the Kansas legislature.

Sincerely,

Loren L. Taylor
KCK Police Legal Advisor
701 North 7th St.
Kansas City, Ks 66101
(913) 573-6195

LLT/ct

Attachment IV
House Judiciary 3/4/87

OFFICE OF THE
LEAVENWORTH COUNTY ATTORNEY
FRANK E. KOHL
COUNTY ATTORNEY
COUNTY COURT HOUSE
4TH & WALNUT STREET
LEAVENWORTH, KANSAS 66048
(913) 682-7611

PATRICK J. CAHILL
CHIEF DEPUTY COUNTY ATTORNEY

MICHAEL E. KELLY
DEPUTY COUNTY ATTORNEY

KARL F. HELMLE
CHILD SUPPORT DIVISION

AUSTIN N. WYRICK
ASSISTANT COUNTY ATTORNEY
CHILD SUPPORT DIVISION

March 4, 1987

Rep. Robert S. Wunsch
Chairman House Judiciary Committee
Kansas House of Representatives
Topeka, Kansas

Dear Rep. Wunsch:

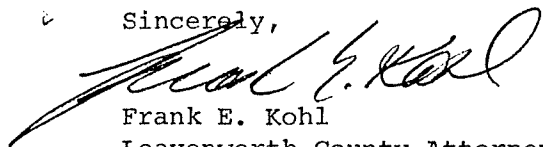
As Leavenworth County Attorney, I would like to voice my support for House Bill #2463 which is currently before your committee for study.

The Kansas Protection from Abuse Act is an important tool in allowing civil intervention and protection for parties involved in domestic disputes. It has been my experience that it is difficult if not impossible to deal with all of the domestic disputes which become violent from a criminal law stand point. Often law enforcement agencies are unable to respond adequately to these matters and prosecutors and the courts are not adequately staffed to provide services to the victims of these cases. The above mentioned legislation will allow victims of abuse in domestic violence cases to protect themselves from these abusive situations and hopefully keep minor problems in check before they erupt into major disputes with possible tragic consequences.

This act also assists law enforcement in the sense that it requires the victim of abuse to take some measure of responsibility for his/her own safety. This keeps the law enforcement personnel from being left attempting to prosecute a case without the assistance of a victim who has reconciled with the offender.

Thank you for your consideration of this legislation. If you or the members of your committee have any questions please contact me.

Sincerely,



Frank E. Kohl
Leavenworth County Attorney

FEK/lm

City of Leavenworth

WILLIAM M. McKEEL

Chief of Police

(913) 651-2260



POLICE DEPARTMENT

Fifth and Seneca

Leavenworth, Kansas 66048

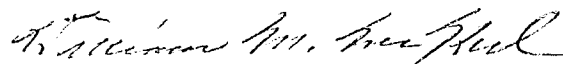
March 3, 1987

Joyce Hart, Director
Family Alliance
103 North Fifth Street
Leavenworth, Kansas 66048

I have reviewed the recommended amendments to the protection from abuse act.

I have no problems with the changes. It appears the changes will provide more immediate recourse to victims of abuse, and provide an alternative to divorce filings.

If the orders are applied for and issued with discretion, they will provide a much needed tool with which law enforcement can assist in the protection of abuse victims.


William M. McKeel,
Chief of Police

WMM/jgm

Office of the Sheriff

LEAVENWORTH COUNTY
503 SOUTH THIRD STREET
LEAVENWORTH, KANSAS 66048

TERRY L. CAMPBELL
SHERIFF

TELEPHONE
(913) 682-5724

March 3, 1987

Judiciary Committee
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Mr. Chairman and Members of the House Judiciary Committee:

I am writing in support of House Bill No. 2463 as it relates to the protection of victims of domestic violence. This bill will facilitate access to judicial protection for those unable to be represented by counsel, most often the result of the inability to afford such service.

Though domestic violence is not isolated to one economic group of individuals, it is apparent that a large percentage of those affected are in the lower income bracket and therefore would be unable to afford counsel to acquire proper judicial protection in the case of abuse.

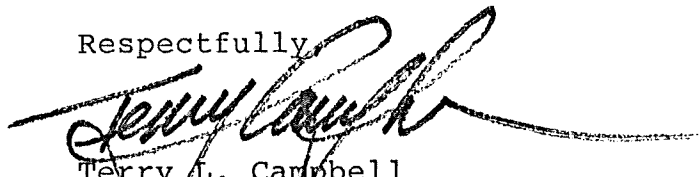
I am fully aware that the proposed legislation creates some additional burdens on the clerk of the court, however I feel the protection of the victim far outweighs the extra responsibility placed on the clerk. I also feel ways can be established to minimize the explanation process the bill requires given to the plaintiff.

This nation is a nation of people who help and care for those less fortunate. Those in a position to help and render aid to a less fortunate individual should do so for the betterment of our country. Those who are unfortunately a victim of an abusive partner should not be a victim to a system that requires economic prominence to have access to its protection.

House Bill No. 2463 will provide everyone their entitled access to the courts and will expedite the process that will enable law enforcement to more adequately provide protection to victims of abuse.

Your favorable consideration of this bill would be greatly appreciated.

Respectfully,



Terry L. Campbell
Sheriff

TLC:jn

LAW OFFICES OF
FRIEDEN & FORBES
CAPITOL TOWER
400 S.W. 8TH STREET SUITE 409
P.O. BOX 639
TOPEKA, KANSAS 66601

JOHN C. FRIEDEN
RANDALL J. FORBES
KEVIN M. FOWLER

TELEPHONE
AREA CODE 913
232-7266

KANSAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

HB 2533

March 4, 1987

Mr. Chairman and Members of the Committee, my name is Kevin Fowler. I am appearing before this Committee on behalf of the Kansas Society of Certified Public Accountants, which strongly endorses the enactment of HB 2533. We greatly appreciate the considerable time already spent by the Special Interim Committee on Tort Reform, this Committee and the Subcommittee in addressing the significant comparative fault principles embodied in HB 2533.

As an active participant in the on-going study of the original HB 2024, we are aware of the concerns expressed by interested parties regarding Sections (e) and (f) of that proposed legislation. HB 2533 should substantially, if not completely, alleviate those concerns. In this regard, we believe:

*HB 2533 will not wipe out 12 years of case law established under the comparative negligence statute [K.S.A. 60-258a].

*HB 2533 significantly addresses the public policy questions relating to the comparison of multiple defendants with varying degrees of fault, ranging from simple negligence to intentional wrongdoing, that the Kansas Supreme Court and appellate courts have wrestled with for years.

*HB 2533 eliminates apparent confusion engendered by the interchangeable use of "comparative negligence" and "comparative fault."

*HB 2533 provides a firm expression of public policy which will enable Kansas courts to build upon settled principles of comparative negligence and comparative fault.

The Kansas Society of Certified Public Accountants accordingly requests your favorable consideration of HB 2533.

STATE OF KANSAS

ELAINE R. HASSLER
REPRESENTATIVE, SIXTY-EIGHTH DISTRICT
DICKINSON AND MORRIS COUNTIES
ROUTE 2
ABILENE, KANSAS 67410



TOPEKA

HOUSE OF
REPRESENTATIVES

March 4, 1987

COMMITTEE ASSIGNMENTS
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WELFARE
MEMBER EDUCATION
GOVERNMENTAL ORGANIZATION
CHAIRMAN KANSAS DAY CARE
COMMITTEE
MEMBER ADVISORY COMMITTEE FOR
CHILDREN AND YOUTH

TESTIMONY TO JUDICIARY COMMITTEE ON HB 2257

HB 2257 was introduced in response to a concern expressed by some parents in my district about the regulations applied to cable TV programming. They assumed that the same rules television and radio operate under would apply to cable TV regarding programming. But our statutes don't clearly speak to cable TV so this bill is introduced to do that.

Research disclosed that the federal government spoke to this subject in the Cable Communication Policy Act of 1984 in which they stated:

"Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States."

In the opening section of this act of 1984, purpose #3 reads: "establish guidelines for the exercises of Federal, State, and local authority with respect to the regulation of cable systems."

In line with that purpose, I am proposing that Kansas grant that regulation right to local authorities regarding their

franchised cable systems. Rather than trying to write a new statute on this issue, HB 2257 amends our state statute 21-4301 of Article 43 - Crimes Against the Public Morals. "Televised program" is added on lines 69 and 68 in the definition of performance and lines 72 and 73 defines "televised". No new standards or regulations are being presented in HB 2257, just extending the present Kansas regulations that we have to all the mediums defined in KSA 21-4301 to cable television, also.

Since the Federal Act is so recent there is no history to present about other states' experiences in applying it for cable TV. Pennsylvania has a proposed bill, SB 643, that would write new law but is realizing the need to balance that fine line between the viewers' rights and the providers' rights and is still working it carefully in their legislature.

The concern of my group of parents, as well as other groups with children's interest, is, of course, the exposure of children to undesirable material in their own homes. All court rulings on that issue to date on the rights of all parties on that subject have been made before the existence of the Federal Cable Communication Act. Now that we have the specific federal policy expressing that state and local authority can have regulatory power over cable television it seems proper that our Kansas statutes speak to that. HB 2257 has been introduced to accomplish that.

0046 their prurient appeal or sexually provocative aspect; or
0047 (b) the person is not a wholesaler and promotes the materials
0048 or devices in the course of the person's business;

0049 (3) (a) Any material or performance is "obscene" if the
0050 average person applying contemporary community standards
0051 would find that:

0052 (i) The material or performance, taken as a whole, appeals to
0053 the prurient interest;

0054 (ii) the material or performance has patently offensive repre-
0055 sentations or descriptions of (A) ultimate sexual acts, normal or
0056 perverted actual or simulated, including sexual intercourse or
0057 sodomy, or (B) masturbation, excretory functions, sadomasochis-
0058 tic abuse or lewd exhibition of the genitals; and

0059 (iii) the material or performance, taken as a whole, lacks
0060 serious literary, educational, artistic, political or scientific value.

0061 (b) "Material" means any tangible thing which is capable of
0062 being used or adapted to arouse interest, whether through the
0063 medium of reading, observation, sound or other manner.

0064 (c) "Obscene device" means a device, including a dildo or
0065 artificial vagina, designed or marketed as useful primarily for the
0066 stimulation of human genital organs.

0067 (d) "Performance" means any play, motion picture, *televised*
0068 *program*, dance or other exhibition performed before *or exhib-*
0069 *ited to* an audience.

0070 (e) "Sexual intercourse" and "sodomy" have the meanings
0071 provided by K.S.A. 21-3501 and amendments thereto.

0072 (f) "*Televised*" means *transmitted by television, whether by*
0073 *cable system, broadcast signals or other means of transmission.*

0074 (g) "Wholesaler" means a person who sells, distributes or
0075 offers for sale or distribution obscene materials or devices only
0076 for resale and not to the consumer and who does not manufac-
0077 ture, publish or produce such materials or devices.

0078 (4) It is a defense to a prosecution for obscenity that:

0079 (a) The persons to whom the allegedly obscene material was
0080 disseminated, or the audience to an allegedly obscene perform-
0081 ance, consisted of persons or institutions having scientific, edu-
0082 cational or governmental justification for possessing or viewing

with reason to believe that such materials or devices are obscene.

(B)

0046 their prurient appeal or sexually provocative aspect; ~~or~~
0047 ~~(b) the person is not a wholesaler and promotes the materials~~
0048 ~~or devices in the course of the person's business.~~

0049 (3) (a) Any material or performance is "obscene" if the
0050 average person applying contemporary community standards
0051 would find that:

0052 (i) The material or performance, taken as a whole, appeals to
0053 the prurient interest;

0054 (ii) the material or performance has patently offensive repre-
0055 sentations or descriptions of (A) ultimate sexual acts, normal or
0056 perverted actual or simulated, including sexual intercourse or
0057 sodomy, or (B) masturbation, excretory functions, sadomasochis-
0058 tic abuse or lewd exhibition of the genitals; and

0059 (iii) the material or performance, taken as a whole, lacks
0060 serious literary, educational, artistic, political or scientific value.

0061 (b) "Material" means any tangible thing which is capable of
0062 being used or adapted to arouse interest, whether through the
0063 medium of reading, observation, sound or other manner.

0064 (c) "Obscene device" means a device, including a dildo or
0065 artificial vagina, designed or marketed as useful primarily for the
0066 stimulation of human genital organs.

0067 (d) "Performance" means any play, motion picture, *televised*
0068 *program*, dance or other exhibition performed before *or exhib-*
0069 *ited* to an audience.

0070 (e) "Sexual intercourse" and "sodomy" have the meanings
0071 provided by K.S.A. 21-3501 and amendments thereto.

0072 (f) "*Televised*" means *transmitted by television, whether by*
0073 *cable system, broadcast signals or other means of transmission.*

0074 ~~(g) "Wholesaler" means a person who sells, distributes or~~
0075 ~~offers for sale or distribution obscene materials or devices only~~
0076 ~~for resale and not to the consumer and who does not manufac-~~
0077 ~~ture, publish or produce such materials or devices.~~

0078 (4) It is a defense to a prosecution for obscenity that:

0079 (a) The persons to whom the allegedly obscene material was
0080 disseminated, or the audience to an allegedly obscene perform-
0081 ance, consisted of persons or institutions having scientific, edu-
0082 cational or governmental justification for possessing or viewing

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