

Approved April 1, 1987
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 March 31, 1987 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:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Ben Foster
Tom Bell, Kansas Hospital Association
Walt Scott, Stormont-Vail Regional Medical Center
Pam Bailey, Wesley Medical Center
Luis Mata, Wyandotte-Leavenworth Legal Services
Cynthia Hale, Kansas Association of Domestic Violence Programs
Jean Schmidt, Shawnee County District Attorney
Jan Haley Maxwell, State Hospital Attorney

House Bill 2070 - Hospital lien against patient's personal injury damages.

Representative Ben Foster, sponsor of the bill, explained the bill to the committee. He stated the bill increases the amount of the hospital lien of \$5,000 because it was not adequate. He said he had hoped the bill would be increased more than the House committee increased it.

Tom Bell, Kansas Hospital Association, testified they do support the bill. He would like to defer his remarks to Walt Scott and another person who has testimony.

Walt Scott, Stormont-Vail Regional Medical Center, testified they are running into more and more problems. Normally \$5,000 has covered the expenses, a night in the hospital, the doctors come in and run every test and run up horrendous bills. He said this bill also would alleviate filing a lot of lawsuits. A committee member inquired about doctors being included in this type of provision. Mr. Scott replied, he had no problem whatsoever with that. He feels doctors should be included in it. Hospitals are different, they have to take the people, and doctors have a choice.

Pam Bailey, Wesley Medical Center, Wichita, urged the committee to recommend passage of the bill. She stated it has been fifteen years since the hospital lien amount has been raised, and in that fifteen years, the cost of health care has risen dramatically. Please do not allow the cost of health care to rise in this state for everyone because of individuals who have the funds to pay hospital bills but do not wish to do so. A copy of her testimony is attached (See Attachment I). Committee discussion with her followed.

House Bill 2463 - Protection from abuse act amendments.

Luis Mata, Wyandotte-Leavenworth Legal Services, stated, as a practicing attorney who carries a substantial caseload of domestic violence

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 31, 1987

House Bill 2463 continued

cases, I am here to offer my support of the proposed amendments to the Kansas Protection From Abuse Act. He explained five proposed amendments to the act. He said we need to make the act even more efficient, and to make forms available so that private attorneys can be enlisted to join the ranks of the advocates. The proposed amendments will achieve these worthy goals. A copy of his testimony is attached (See Attachment II). Committee discussion with him followed.

Cynthia Hale, Kansas Association of Domestic Violence Programs, testified the proposed amendments have been a legislative priority for the association for the past two years as the amendments contained in the bill will allow more access by victims to the courts and will ensure more meaningful relief will be available to them. Copies of her testimony and letters of support for the bill are attached (See Attachments III). Committee discussion with her followed.

House Bill 2428 - Person incompetent to stand trial, notice of release from commitment.

Jean Schmidt, Shawnee County District Attorney, testified people who were charged with violent crimes and were referred to the state hospitals for competency testing, and after they were institutionalized, and not found competent to stand trial, they did not know what happened to them. The change in the law would amend the current statute and instead of notification to the court, notification will be given to county or district attorney with an opinion from the head of the treatment facility. This will put their office in a better position to prosecute those people found competent to stand trial. During committee discussion, the chairman pointed out the bill has changed from when it was originally drafted. She said they had reviewed those changes.

Jan Haley Maxwell, State Hospital Attorney, said she was speaking on behalf of Bill Ryan. She explained their amendment in the bill.

Following committee discussion, Senator Steineger moved to report the bill favorably. Senator Parrish seconded the motion, and the motion carried.

House Bill 2070 - Hospital lien against patient's personal injury damages.

Senator Feleciano moved to amend the bill to change the dollar amount to ten thousand dollars. Senator Steineger seconded the motion.

Senator Winter made a substitute motion to amend the bill to provide for a subrogate requirement to pay that balance of attorney's fees that was contracted to pay. Senator Hoferer seconded the motion, and the motion carried.

Senator Winter moved to amend the bill to provide in no event amount recovered, the lien shall be on that position on award itemized as pertains to medical. Senator Gaines seconded the motion. Following committee discussion, the motion carried.

Senator Winter moved to report the bill favorably as amended. Senator Gaines seconded the motion, and the motion carried.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-31-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Aaron Galle	Rte 3 Box 9 Hillsboro	✓
Terry Medley	313 S. Wilson, Hillsboro	✓
Clifford Roeder	Rt 3 Box 40, Hillsboro	✓
CYNTHIA K. HAZE	1820 VERMONT, LAWRENCE	Kansas Association of Domestic Violence Programs
Walter N. Scott	Topeka	Assoc. Fed. BUREAUS
Janet E. Bailey	Wichita	Wiley Med Center
Gen. M. Spivett	200 E 7th	Sh. City Dist Atty
Joan Clark	Topeka	KCDAA
Terry Stevens	Topeka	Topeka P.D.
Luis MATA	KCK	WYANDOTTE FROM SERO.
Jan Haley Maxwell	ARS	MHR Services
FRANK ROBERTSON	KCS CONSULTING ENG	TOPEKA
George Bohner	KCS Consulting Eng	Topeka
Quelton Matus	OJA Topeka	OJA
Rosilyn James-Martin	Topeka	SRS-Adult Services
Lain Callahan	Topeka	am. ens. Assn.
Nora Bell	Topeka	NSA Hosp Assn
W. D. M.	Topeka	Housl
McHaver	"	Exec Services
Ed Johnson	Topeka	KCCS
Ron Smith	"	KBA
Kevin M. Hill	"	
Bob Arbutnot	Topeka	ATHA
Jim May	"	KBA
Bill Jery	"	KES

attach. II
Senate Judiciary
3-31-87

PAMELA E. BAILEY

Testimony before Senate Judiciary Committee

March 31, 1987

I. INTRODUCTION. Mr. Chairman and members of the Committee. Thank you for allowing me the opportunity to appear before you today during your hearing on House Bill 2070. My name is Pamela Bailey and I am an attorney with the law firm of Boyer, Donaldson & Stewart in Wichita, Kansas. For many years, our firm has represented Wesley Medical Center. Included within our duties as general counsel has been the collection of patient accounts for the hospital.

II. KANSAS HOSPITAL LIEN STATUTE. In 1939, the Legislature of the State of Kansas passed the first hospital lien statute establishing a \$200.00 lien on behalf of the hospital. Twelve years later, in 1951, the Legislature revised the lien statute and raised the amount of the lien to \$700.00. In 1957, the Legislature again raised the amount of the lien to \$1,500.00. It was not until fifteen years later, however, in 1972, that the lien amount was raised to \$5,000.00. It is now 1987, fifteen years since the last revision of the hospital lien statute, and the amount of the hospital lien remains at \$5,000.00.

*Attch. I
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III. THE HOSPITAL LIEN AMOUNT NEEDS TO BE RAISED. As of March 1, 1987, my law firm had 44 outstanding liens on file for Wesley Medical Center. The balance due and owing on these 44 liens is \$585,081.39. Very few of these liens are for accounts with a balance of less than \$5,000.00. In fact, many of these liens are for accounts with balances of \$50,000.00.

Please understand that we do not wish to take every bit of recovery money an injured party might receive. We are always willing to compromise our outstanding bill to see that the injured party, his attorney, and all other health care providers receive an equitable amount. Unfortunately, without the existence of a hospital lien, the hospital might not be paid at all for the services it has provided. For example, I have an account for \$66,000.00 in which Wesley received only its \$5,000.00 lien amount and the balance is currently outstanding. If the hospital lien amount were unlimited or greater, I know that I would be able to collect a greater portion of the hospital's outstanding accounts.

IV. CONCLUSION. As an attorney for a hospital here in the State of Kansas, I would urge this committee to recommend passage of House Bill 2070. It has been fifteen years since the hospital lien amount has been raised, and in that fifteen years, the cost of health care has risen dramatically. Oftentimes, the hospital bills for which liens are filed are far in excess of \$5,000.00. Many of these patients receive large settlements from third parties, yet never pay the hospital more than \$5,000.00 for the services the hospital has rendered. Please do not allow the cost

of health care to rise in this state for everyone because of individuals who have the funds to pay hospital bills but do not wish to do so.

Thank you for the opportunity to speak to you today. Should you have any questions or if I can be of further assistance, please feel free to contact me at the following address:

Pamela E. Bailey
Boyer, Donaldson & Stewart
1030 First National Bank Building
Wichita, Kansas 67202
(316) 264-7321

PREPARED REMARKS REGARDING H.B. 2463
BY LUIS MATA, DIRECTOR,
WYANDOTTE-LEAVENWORTH LEGAL SERVICES

March 31, 1987

TO THE MEMBERS OF THE KANSAS
SENATE JUDICIARY COMMITTEE:

As a practicing attorney who carries a substantial caseload of domestic violence cases, I am here to offer my support to the proposed amendments to the Kansas Protection from Abuse Act. These amendments, which are sponsored by the Kansas Association of Domestic Violence Programs, will clean-up the Act by amending certain sections which have proven deficient in actual practice, and, more importantly, will encourage the pro bono use of the Act by private attorneys. Both of these goals are critically needed in order to carry on the battle against the abuse of victims and their children.

LEGAL ACCESS TO THE RESIDENCE: The current statute requires that a victim not only be physically abused - it also imposes a "jurisdictional" requirement that both parties continue to have legal access to the residence. This requirement prevents use of the Act when the offender is not a party to the lease or rental agreement for the property in which the plaintiff resides. It keeps lawyers from using the Act to protect women who are being persecuted by boyfriends or ex-husbands who do not have the legal right to be residing in the home of the victim. There seems to be no credible rationale for keeping this jurisdictional requirement in the Act. We are requesting that this language be removed from the first paragraph to K.S.A. 60-3102.

FORMS ARE TO BE PROVIDED BY THE CLERK OF THE COURT: The proposed amendment would require that forms to be prescribed by the Supreme Court be made available by the clerk of the court to the victim or the victim's lawyer. The clerks of the court would not be required to explain or help fill out the forms. Their responsibility would be to make the forms available. By doing this, we will

*Atch. II
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be making the Act much more convenient and accessible to private attorneys who are wanting to help out with pro bono efforts, but who find that victims of domestic violence are not financially able to retain a private attorney. It needs to be remembered that in many Kansas communities legal aid attorneys are the only ones doing Protection from Abuse cases, and that not every Kansas town has a legal aid office. More frequently we are finding out that with the growth of the battered women shelters many legal aid offices have been severely overloaded in their capacities to handle domestic violence cases, and that assistance from members of the private bar is becoming much more important in meeting the legal needs of the victims. This proposed amendment is found under subsection (b) of K.S.A. 60-3104.

HEARING SHALL BE HELD WITHIN 30 DAYS: The current statute, at K.S.A. 60-3106, requires that the final hearing must be held within 10 days of the filing of the petition. This short time requirement makes it almost impossible to achieve personal service in a very high percentage of the cases. Ten days is just not enough time to allow the clerk of the court to prepare the summons and to allow the process server to find and procure service over the defendant. As a consequence, a waste of attorney time and judicial resources occurs as a vicious cycle of 10-days continuances takes over. By extending the time for the final hearing to 30 days, or even 20 days, we would eliminate this wasteful cycle.

TEMPORARY CUSTODY ORDER: One of the most obvious defects of the current Act is that a temporary custody order regarding the minor children of the parties cannot be granted by the court under the current language of K.S.A. 60-3106 (b). This means that even after a restraining order has been issued keeping the abuser away from the plaintiff and her children, a determined abuser can still trespass into the plaintiff's home using the reason that he is merely exercising his parental visitation rights, or even that he has the legal right to take the minor children away from the plaintiff since no custody order is in effect. Often, children are spirited away from their schools since the principal are not constrained by a temporary custody order. This situation is against the best interest of the children, and the court needs to be given the authority to issue an order deal-

Attch. II

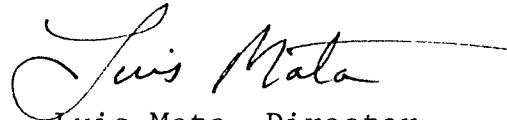
ing with temporary custody and rights of visitation.

CONTINUANCE OF THE HEARING: Under subsection (c) of K.S.A. 60-3106, the final hearing may only be continued "by consent of the parties." This requirement is impossible to meet if the reason why the case is being continued is because the defendant has not been served. It is also illogical to think that a defendant who has been abusing the plaintiff would consent voluntarily to a continuance if such continuance was needed by the plaintiff. We do not need this obstacle, and therefore the language "by consent of the parties" should be removed from the Act.

CONCLUSION

The Kansas Protection from Abuse Act has been one of the most effective tools available to advocates of battered women and children. We need to make the Act even more efficient, and to make forms available so that private attorneys can be enlisted join the ranks of the advocates. The proposed amendments will achieve these worthy goals.

Dated: March 31, 1987



Luis Mata, Director
Wyandotte-Leavenworth
Legal Services
825 North 7th Street
Kansas City, Kansas 66101
(913) 621-0200

TESTIMONY OF CYNTHIA K. HALE
PRESIDENT, KANSAS ASSOCIATION OF
DOMESTIC VIOLENCE PROGRAMS

CONCERNING HOUSE BILL 2463
BEFORE THE SENATE JUDICIARY COMMITTEE
March 31, 1987

On behalf of the Kansas Association of the Domestic Violence Programs (KADVP), I wish to address the Senate Judiciary Committee concerning the proposed amendments to the Protection From Abuse Act, HB 2463. The KADVP is an association of twenty-four (24) programs across the state providing shelter, safehomes and other services to victims of domestic violence and their children.

In 1983 the Kansas Legislature estimated that there are over 150,000 women abused by their spouses each year in Kansas. The domestic violence programs sheltered over 4,000 women and children in 1986. Obviously the programs have only been able to scratch the surface of the domestic violence problem in Kansas, but the experience gained from working with victims has enabled the Association to become aware of the problems with the civil relief available to victims.

The proposed amendments have been a legislative priority for the Association for the past two years as the amendments contained in the bill will allow more access by victims to the courts and will ensure more meaningful relief will be available to them.

The Protection From Abuse Act passed in 1979 provides to victims of domestic violence a procedure for obtaining restraining orders and other temporary relief from their abusers. The Act has enabled domestic violence victims and their children a means to obtain such relief when the filing of a divorce is inappropriate. The Act needs, however, some technical changes to clarify and simplify the procedure and relief.

The proposed preamble strengthens the purpose of the Act in order to send a message to the judiciary in Kansas that the Act is for the protection of victims and their children and to ensure access to such protection by victims.

*Attach. III
Senate Judiciary
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The proposed language striking the requirement for "legal access to the residence" is needed in that a legal impediment to the relief of the Act would be removed for those victims who could not otherwise meet this technical requirement. While the original intent may have been to ensure that an owner of property was not ousted by a person under the provisions of the Act, the requirement is unnecessary as the Act already provides specifically that an Order may not grant possession of property to the exclusion of a sole owner. As the Act now reads, a victim, whose abuser had formerly resided with her but whose name does not appear on the lease, would not have the relief under the Act available to her as her abuser does not have "legal access" to the residence.

The Act needs to include pro se forms so that a victim without the assistance of an attorney may access the courts in order to obtain a civil restraining order and other temporary relief. The proposed simplified procedure and forms would allow victims and pro bono attorneys, who have been reluctant to take on the representation of domestic violence victims, with a means to seek the relief available under the Act.

The temporary relief available under the Act needs to be expanded to allow for the granting of temporary custody of the minor children. Otherwise, the children are utilized to further torment the victim with the overhanging threat that the other parent will take the children and run. With a temporary custody order, the status quo of the children can be maintained. School officials and day care providers are also spared the decision of which parent to allow the children to leave with.

The order of support available under the Act needs to have the 30 day limitation eliminated so that the minor children are not deprived of support. Innocent children should not be penalized by being deprived of parental support during traumatic times.

The above sets out some of the most important reasons that the KADVP seeks your support in amending the Kansas Protection from Abuse Act. Absent a criminal prosecution for assault and battery, the relief available under the Act is the best means available to protect a battered spouse. Copies of letters of support for the bill from law enforcement are attached.

Respectfully submitted,

Cynthia K. Hale
Cynthia K. Hale
1820 Vermont St.
Lawrence, Kansas 66044

Attach III



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

LLT/ct

Attach. III

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.

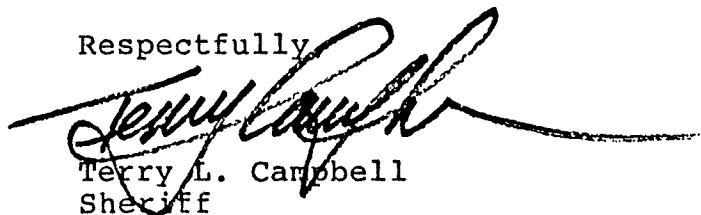
I am fully aware that the proposed legislation creates some additional burdens on the clerk of the court, however I feel the protection of the victim far outweighs the extra responsibility placed on the clerk. I also feel ways can be established to minimize the explanation process the bill requires given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

attach. III

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:

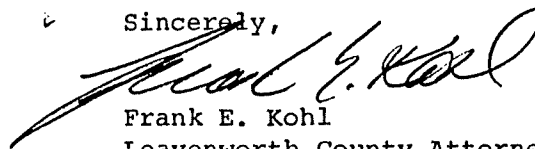
As Leavenworth County Attorney, I would like to voice my support for House Bill #2463 which is currently before your committee for study.

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

attach III

City of Leavenworth

WILLIAM M. McKEEL
Chief of Police
(913) 651-2260



POLICE DEPARTMENT
Fifth and Seneca
Leavenworth, Kansas 66048

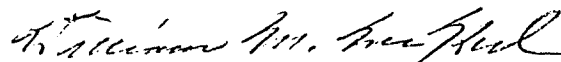
March 3, 1987

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

Attach. III