

Approved April 4, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~a.m.~~ p.m. on March 22, 1988 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
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Vincent Snowbarger
Don Jarrett, Chief Counsel, Johnson County, Olathe
Judge Herbert Walton, Administrative Judge, 10th District Court, Johnson County, Olathe
Willie Martin, Intergovernmental Coordinator, Sedgwick County, Wichita
Jim Robertson, Child Support Enforcement Administrator, Department of Social & Rehabilitation Services

Hearing on S.B. 692 -- Code for the enforcement of county resolutions

Representative Snowbarger informed the Committee this bill would create a code for limited procedure for the enforcement of county resolutions within the state court system, which would be similar to the small claims court. He reviewed the main provisions of S.B. 692 and recommended removing the \$29.00 for court costs that was added by the Senate Judiciary Committee, (see Attachment I).

Don Jarrett testified Johnson County has evolved into an urban environment. To better control matters of zoning, sanitation, animal control, safety and health standards and building and fire codes, the Johnson County Board of Commissioners proposed establishing a court or judicial process that related more directly to code enforcement rather than to the criminal code. S.B. 294 was introduced in 1987 which would have allowed the Board to adopt portions of the Code for Municipal Courts. S.B. 294 was referred to an interim committee for study. S.B. 458 was the result of the interim study. S.B. 692 was drafted in response to comments from the State Supreme Court and the Office of the Judicial Administrator. S.B. 692 is a modified form of S.B. 294 and S.B. 458. This bill does not create a new level of courts. It utilizes the existing court system. It does not affect the process for traffic offenses, and functions under the authority of the district court administrative judge. Implementation of the provisions of S.B. 692 is not anticipated to have any appreciable fiscal impact upon the State, the County or the residents. He opposed the assessing of court costs in the amount of \$29.00, (see Attachment II).

Judge Walton testified this bill will not require a separate court or separate clerk's office. The bill leaves the process within the unified court system. He urged the Committee to recommend the bill for passage.

Willie Martin testified in support of S.B. 692. She stated this legislation would provide Sedgwick County the ability to process, in a timely manner, violations of county codes and resolutions. She also said the \$29.00 fee for court costs should be removed, (see Attachment III).

Representative Solbach moved to remove the \$29.00 court costs amendment from the bill. Representative Kennard seconded the motion. The motion passed.

Representative Snowbarger moved and Representative Douville seconded to report S.B. 692, as amended, favorable for passage. The motion passed.

Hearing on S.B. 566 -- Children, support and determination of parentage.

Jim Robertson testified Sec. 1 of the bill bars the use of the Kansas Parentage Act to determine parentage of a child in need of care. Sec. 2 allows child support judgments to become dormant if not enforced within 5 years, but extends the length of the dormancy period until 2 years after the child is emancipated. Sec. 3 states that the court has the authority to prevent windfalls when older child support judgments are being revived or to direct disbursements to ensure that they go to the person or agency which actually supported the child during the child's minority. Sec. 4

Unless specifically 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~~/p.m. on March 22, 1988

authorizes the Department of Corrections to send payments for dependents receiving assistance directly to the court which ordered support, or to S.R.S. where there is no order. Sec. 5 clarifies S.R.S.'s authority to collect reimbursement of assistance and codifies reimbursement rights of similar agencies of other states. He estimated Sec. 3 could result in increased revenue to the state of \$500,000 the first year and \$5.5 million over the next 3 to 5 years, (see Attachment IV).

There being no other conferees, the hearing was closed on S.B. 566.

The Committee considered H.B. 3000.

Representative Solbach moved to approve the amendments to H.B. 3000. Representative Whiteman seconded the motion. The motion passed.

The amendments are (Attachment V).

A motion was made by Representative Solbach and seconded by Representative Kennard to report H.B. 3000, as amended, favorable for passage. The motion passed.

The Committee meeting was adjourned at 4:45 p.m. The next meeting will be Wednesday, March 23, 1988, at 3:30 p.m. in room 313-S.

VINCENT K. SNOWBARGER

REPRESENTATIVE, 26TH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN, LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPOINTMENT
MEMBER, JUDICIARY
TAXATION
TRANSPORTATION

Testimony before the House Judiciary Committee on S.B. 692
March 22, 1988

MAJOR PROVISIONS OF S.B. 692

1. A Code for Limited Procedure for the Enforcement of County Resolutions within the state court system would be created. This would be an alternative option to the current enforcement procedure. (Similar to Small Claims court.)
2. The Code would cover all resolution violations except traffic violations. Abandoned vehicles, parking and traffic regulations on county owned property would be covered.
3. The Code would not provide for confinement in jail. Fines collected under the Code would go to the County General Fund.
4. Counties would be required to pay for administrative costs of the procedure and be authorized to levy a tax and create a special fund for this purpose.
5. The administrative judge would have the authority to hire pro tem judges to hear these cases.
6. Counties could appoint code enforcement officers without arrest powers.
7. Appeals would go to the district court in the same manner provided in the Small Claims Procedure Act.
8. County counselor or a county-appointed prosecutor would prosecute case.
9. The Senate added an amendment that added a \$29 court cost which should be eliminated.

Attachment I

STATEMENT IN SUPPORT OF
SENATE BILL NO. 692
PRESENTED BY
BOARD OF COUNTY COMMISSIONERS
JOHNSON COUNTY, KANSAS
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
MARCH 22, 1988

Attachment II

I. INTRODUCTION

The Board of County Commissioners of Johnson County, Kansas wishes, first, to express its sincere appreciation for the consideration given by the members of this committee to the proposal embodied within Senate Bill No. 692 and for the opportunity to appear before the committee to urge passage of this legislation. For several years now, the Board has placed a very high priority upon upgrading the quality of governmental services within Johnson County. One of the primary areas of focus by the Board has been the enforcement of county codes and resolutions. After considerable study, the Board implemented a program to revise and codify its administrative and regulatory resolutions and to establish a simplified process for enforcement. A key ingredient of that program, however, was to establish a court or judicial process that related more directly to code enforcement rather than to the criminal code.

The Board, therefore, proposed Senate Bill No. 294 during the last legislative session, which would have allowed the Board to adopt portions of the Code for Municipal Courts. That bill was referred to an interim committee for study, and the interim committee report supported the proposal, although in a slightly different form, which resulted in the drafting of Senate Bill No. 458.

The Bill presently under consideration, 692, was drafted in response to comments from the State Supreme Court and the Office of the Judicial Administrator. It is again a modified form of the prior drafts in 294 and 458.

II. PROVISIONS OF THE BILL

Like the prior drafts, Senate Bill No. 692 is directed at establishing a workable mechanism for the enforcement of county codes and resolutions through a simplified court procedure.

The Bill, first, amends K.S.A. 19-101d to provide that, in counties with a population in excess of 300,000, prosecutions for violations of codes and resolutions may be commenced in the district court and conducted in the manner provided in the code for the enforcement of county codes and resolutions. Thus, the bill, as drafted, does provide for an alternative procedure, but leaves the process within the current court structure. Further, it is limited in application to counties with a population in excess of 300,000.

Secondly, the bill authorizes the Board of County Commissioners to appoint code enforcement officers, who have powers to issue "tickets" but not make arrests, which is a very key element to the enforcement program. Further, the bill provides that the costs shall be paid by the county, but the bill does then provide that the county may retain all fines levied in the enforcement process - except the fines for traffic offenses. Finally, the bill does limit the

application of the new procedure, providing that it may not be used for violations that may result in arrest or imprisonment.

Finally, the bill adopts a procedural code, which is similar to the code for municipal courts, which may be utilized in the district court.

III. RESULT OF THE BILL

As drafted, Senate Bill No. 692, does provide all of the key elements sought and deemed necessary by the Board of County Commissioners. It provides for a court forum under a simplified procedure to hear and determine code enforcement actions. It provides for the authority to use "tickets" rather than more elaborate criminal proceedings. And it allows a method to finance the enforcement efforts.

Moreover, the bill meets each of the concerns raised by the judiciary. It does not create a new level of courts. It does utilize the existing court system. It does not affect the process for traffic offenses. And it functions under the authority of the district court administrative judge.

The resultant affect of the bill will, therefore, be a very positive and influential method for the enforcement of essential county regulatory codes, with no major impact upon the current judicial system.

IV. NEED FOR THE BILL

Throughout the entire process of the last legislative session, the interim study, and the proceedings before this Legislature, the one constant factor, upon which all participants have agreed, is that the legislation, in some form, was needed. That need is very real in Johnson County, as fully supported even through the testimony of the district judges from the county. Over the recent years, the county has evolved more and more into an urban environment. Growth and development have brought many benefits to the county and the State, but with them has come the need for government procedures to evolve also - to better control matters of zoning, sanitation, animal control, safety and health standards, building and fire codes, etc.. This bill will greatly help in that evolution.

V. FISCAL IMPACT

Implementation of the provisions of Senate Bill 692 is not anticipated to have any appreciable fiscal impact upon the State, the county, or the residents. The bill, indeed, provides a better method to accomplish functions that now must be performed, but are performed in a dis-jointed fashion. Initial implementation will be accomplished through existing staff by reassignment of some duties, and through the use of existing procedures for the appointment of pro-tem judges. Revenue generated through fines will help support development and operation of the program.

VI. AMENDMENT PREFERRED

While the Board of County Commissioners is very appreciative of the efforts of the Senate Committee in reviewing and recommending Senate Bill 692 for passage, and while the Board is generally very pleased with the bill, as drafted, the Senate Committee did make one draft amendment to the Bill which the Board strongly believes should be changed.

As originally drafted, the Bill provided that no court costs would be assessed under the simplified new procedure code. The Senate Committee amended the Bill to provide that court costs (totalling \$29) would be assessed for proceedings under the code. At the Senate hearings, the County expressed its strong preference that court costs not be assessed, but did not vigorously oppose the amendment.

At this time, however, the Board does believe that it is very important to oppose that provision and to request and urge this committee to amend the Bill.

The Board of County Commissioners prefers that no court costs be assessed for the following general reasons:

1. **CONSISTENCY AND ACCEPTANCE.** The simplified code of procedure was modeled after the code for municipal courts, which provides that no court costs are to be assessed. Thus, an inconsistency and question of fairness may arise, depending upon which side of a city boundary a person resides.

2. **POSSIBLE DOUBLE COSTS.** Under this code, an appeal is taken to the state district court - the same as for city court actions - for a de novo hearing. At that proceeding, court costs are assessable, to an amount totalling perhaps \$89. Thus, a person may be subjected to double assessment (or more) for court costs on one violation, which may be perceived as manifestly unfair, particularly where the county, and not the state, is responsible for payment of the costs for the code enforcement procedures under the Bill.

3. **DETRACTS FROM PURPOSE.** The primary purpose of the Bill is to establish a simplified procedure for code enforcement to the end that code violations are prevented and/or corrected. It is not the intent of the county to be punitive per se, particularly where correction of the problem may itself be costly to the homeowner. Automatic assessment of court costs may, therefore, frustrate the simplified procedure and the use of uniform citations as the mechanism for enforcement.

4. **RESULTING INEQUITIES.** The procedure is intended to apply to non-traffic code violations in the county, which vary widely in type and degree. Some violations such as pollution or dumping of wastes may justify substantial fines, penalties, and even assessment of costs. However, many of the more common offenses such as loose animals, fireworks, high weeds, littering, damaged library materials, etc. logically would not warrant such substantial penalties. Thus, a standard, automatic assessment of costs could easily be perceived as inequitable.

5. **COSTS TO THE COUNTY.** Under the Bill, the county pays all of the costs and expenses for code enforcement and the judicial resources used for that enforcement. Where court costs are then assessed for any specific enforcement action, the county will then be required to pay those assessed costs for any indigent defendant and for any person found not guilty. Those extra costs to the county are unnecessary where the county does not share in the receipt of assessed costs, but then pays for all of the costs and expenses for the judicial system anyway.

For those reasons, the Board is compelled to oppose the assessment of costs under the simplified procedure. The Board, therefore, requests and strongly urges that this committee amend the Bill to strike that portion which requires the assessment of costs and to amend the Bill to state that costs not be assessed under the simplified code procedure, which is consistent with the code for municipal courts.

VII. CONCLUSION

The Board of County Commissioners strongly urges this Committee on Judiciary to support Senate Bill No. 692, with an amendment to eliminate the assessment of court costs, and to work for its adoption. The bill is the result of much study, much discussion, and much cooperation by all participants. It has been reviewed and commented upon favorably by the State judiciary. It is greatly needed by Johnson County, and has the full endorsement, support, and recommendation of the Board.

RESPECTFULLY SUBMITTED,

BOARD OF COUNTY COMMISSIONERS
JOHNSON COUNTY, KANSAS



SEDGWICK COUNTY, KANSAS
INTERGOVERNMENTAL COORDINATOR

WILLIE MARTIN

COUNTY COURTHOUSE • SUITE 315 • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 268-7552

March 22, 1988

TO: House Judiciary Committee
FR: Willie Martin, Intergovernmental Coordinator
Sedgwick County
RE: Senate Bill 692

Mr. Chairman and members of the Committee. We appreciate this opportunity to testify in support of Senate Bill 692. This legislation would provide Sedgwick County the ability to process in a timely and cost effective manner violations of county codes and resolutions.

We would strongly support an amendment which would remove the stipulation requiring a \$29.00 fee for court costs.

We respectfully request your support of Senate Bill 692.

Attachment III

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

TESTIMONY REGARDING SENATE BILL 566

SECTION 1: Page 7, Child in Need of Care Paternities

Summary: Clean-up amendment of K.S.A. 38-1516, (code for care of children), which bars use of the Kansas Parentage Act to determine parentage of a child in need of care.

Background: The Kansas Parentage Act, K.S.A. 38-1110 et seq., was enacted in 1985 and provides that proceedings concerning the parentage of a child "shall be governed by this act...." No exception is made for proceedings under the code for care of children. The former paternity statute had also been found in article 11 of chapter 38, before its repeal in 1985.

The code for care of children was enacted before the Kansas Parentage Act, and in K.S.A. 38-1516 it broadly prohibits application of article 11 to paternity determinations in CINC (child in need of care) proceedings. The apparent rationale was that the old paternity action had to be initiated by the mother and allowed her to recover birth expenses, neither of which was always appropriate in CINC proceedings. Amendment of K.S.A. 38-1516 will eliminate the conflict between the statutes.

Fiscal Impact: This amendment is not expected to have any significant fiscal impact.

SECTION 2: Page 7, Dormancy

Allows child support judgments to become dormant if not enforced within 5 years, but extends the length of the dormancy period until 2 years after the child is emancipated.

Under this approach, a child support judgment would become dormant after 5 years if not enforced, just as any money judgment would. If it becomes dormant it must be revived, however, the time limit for filing a revivor motion would be delayed until the child becomes emancipated. Once the child is emancipated, the revivor must be filed within 2 years. This mirrors the tolling provisions in KSA 60-508 for filing a petition.

Because a judgment that is dormant is not a lien on real estate, extending the dormancy period would not change the present law's impact on title searches and real estate transactions.

Section 3: Dormancy

Amends KSA 60-2404 to clearly state that the court has the authority to prevent windfalls when older child support judgments are being revived or to direct

Attachment IV

disbursements to ensure that they go to the person or agency which actually supported the child during the child's minority.

Existing provisions of KSA 60-2404 require any motion for revivor to be served in the manner of a summons, i.e., personally. The existing notice and hearing requirements would protect a support debtor from "surprise" if older support judgments were to be revived, in the same way a demand for payment under contract law protects a contract debtor.

Background: Case law in Kansas has traditionally upheld the principal that child support is a right that belongs to the child. Further, the courts have uniformly held that a parent may not waive or take any action which would compromise the child's right to receive support. Other statutes of limitation generally do not apply to eliminate children's rights until after they become an adult. Therefore, child support judgments should remain enforceable until after a child has the capacity to enforce his or her rights as an adult.

Current Kansas dormancy laws are among the shortest and most confusing in the nation. The majority of states either have no statute of limitations which prevent the enforcement of child support or have a much longer period before dormancy applies. In addition, existing Kansas case law requires courts to apply the dormancy statutes strictly and forbids the use of equitable powers to ameliorate harsh results. It is patently inequitable for the mere passage of time to absolve a parent of a debt owed to a child who is legally incapable of protecting his or her rights.

Fiscal Impact: The proposed amendment would increase state revenues substantially by allowing CSE to collect greater amounts of past due support which have been assigned to the State. Passage of this legislation will provide projected revenues of one half a million dollars the first year and \$5.5 million over the next three to five years. Furthermore, collections on behalf of Non-ADC families would result in higher federal incentive payments, as well as preventing public assistance expenditures for those who might otherwise be forced to draw assistance. Increased collections on behalf of other states' IV-D agencies would also result in higher federal incentive payments.

SECTION 4: Payments From the Department of Corrections

Summary: Amendment of K.S.A. 75-5268(c), authorizing Dept. of Corrections to send payments for dependents receiving assistance directly to the court which ordered support, or to SRS when there is no order.

Background: When an inmate's dependent receives public assistance, the existing statute requires the Dept. of Corrections to send payments for the dependent's support directly to the dependent, notifying SRS of the payment. However, because the dependent's support rights have been assigned to SRS, the dependent is required to turn the payment over to SRS or risk prosecution for fraud. This applies whether there is a support order or not.

If the Dept. of Corrections sent payments to the court which ordered support, existing procedures would insure that payments were sent to SRS while support rights were assigned, and then sent to the dependent when the assistance case closed. Furthermore, most courts order support to be sent to the court for posting on the official payment record. When payments are sent directly to the dependent, the inmate does not receive credit on the court payment record until the dependent reports the payment or until the discrepancy is discovered.

The proposed amendment would simplify the Dept. of Corrections' responsibilities by eliminating the need to separately notify SRS when a payment is made and by eliminating the need to change the payee's address whenever the dependent moves or the assistance case closes. For cases in which there is no court order, the proposed amendment would allow the Dept. of Corrections to transmit the payments en masse directly to SRS via interfund voucher, eliminating the need for separate warrants.

Fiscal Impact: The proposed amendment would reduce the incidence of fraud caused by recipients' failure to turn in support received, reduce delays in collecting support payments after notice from Dept. of Corrections, and reduce administrative expenses for the Dept. of Corrections.

SECTION 5: Replacement for 39-718a

Summary: New statute, replacing K.S.A. 39-718a, to clarify SRS' authority to collect reimbursement of assistance and to codify reimbursement rights of similar agencies of other states.

Background: The wording of the existing statute has lead to repeated litigation over the meanings of "absent parent," "dependent child," and "complied fully with the terms of the court's order." The proposed amendment would establish the right to reimbursement in very general language and then spell out the exceptions using terms already defined in Chapter 38.

The amendment would codify existing practices in computing the child's share of assistance and in computing liability and applying payments when an existing court order has been complied with in some months but not others. Codification would assure uniform application.

URESAs (Uniform Reciprocal Enforcement of Support Act, K.S.A. 23-451 et seq.) allows another state to file a petition for reimbursement from a parent who lives in Kansas, however, the duty of the parent to reimburse that state is not codified under Kansas law. Other states must now rely on Kansas common law as the basis for reimbursement, but there are no appellate cases directly on point and the treatment of these petitions varies widely among both prosecuting attorneys and judges. Codification of other

states' rights will assure more uniform treatment for both Kansas residents and for other states seeking reimbursement.

Fiscal Impact: This amendment would reduce SRS' litigation expenses by more clearly defining who is liable for reimbursement. The codification of other states' reimbursement rights would encourage and simplify enforcement of those rights, resulting in higher federal incentive payments based upon higher interstate collections.

Submitted by: James A. Robertson
CSE Administrator
Dept. of Social and
Rehabilitation Services
296-4188

JAR:tmd

HOUSE BILL No. 3000

By Committee on Judiciary

2-22

0018 AN ACT regulating travel promoters.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. The legislature finds and declares that certain
0021 advertising, sales and business practices of travel promoters have
0022 worked financial hardship upon the people of this state; that the
0023 travel business has a significant impact upon the economy and
0024 well being of this state and its people; that problems have arisen
0025 which are peculiar to the travel promoter business; and that the
0026 public welfare requires regulation of travel promoters in order to
0027 eliminate unfair advertising, sales and business practices. The
0028 purpose of this act is to establish standards which will safeguard
0029 the people against financial hardship and to encourage competi-
0030 tion, fair dealing and prosperity in the travel business.

0031 Sec. 2. As used in this act:

0032 (a) "Travel promoter" means a person who sells, provides,
0033 furnishes, contracts or arranges, or advertises that such person
0034 can or may arrange, or has arranged, wholesale or retail air or sea
0035 transportation either separately or in conjunction with other
0036 services. Travel promoter does not include: (1) An air carrier, (2)
0037 a sea carrier or, (3) an officially appointed agent of an air carrier
0038 who is a member in good standing of the airline reporting
0039 corporation, (4) ~~a nonprofit organization, or (5) a travel promoter~~
0040 ~~who has in force \$300,000 or more of liability insurance coverage~~
0041 ~~for professional errors and omissions and a surety bond or~~
0042 ~~equivalent surety in the amount of \$100,000 or more for the~~
0043 ~~benefit of consumers in the event of a bankruptcy on the part of~~
0044 ~~such travel promoter.~~

0045 (b) "Air carrier" means a transporter by air of persons subject

communicates an offer,

bonafide

exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code of 1986 as in effect on the effective date of this act, (5) a member of the National Tour Association, or (6) a person who offers, sells, provides, furnishes, contracts or arranges, or advertises that such person can or may arrange, or has arranged primarily ground transportation

Attachment V