

Approved February 24, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~pm~~ on February 22, 1988 in room 514-S of the Capitol.

All members ~~xxx~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines
Langworthy, Parrish, Talkington and Yost.

Committee staff present:

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

Conferees appearing before the committee:

Sheriff Tom Keys, Russell County
Sheriff Mike Hill, Sedgwick County
Sheriff Lewis Hoskins, Johnson County
Sheriff Clifford Hacker, Lyon County
Sheriff Lyman Reese, Sedgwick County
Jim Robertson, SRS Child Support Enforcement Program
Matt Lynch, Kansas Judicial Council

Senator Robert Frey requested a bill be introduced as a committee bill concerning the Uniform Pre-marital Agreement Act. Senator Hoferer moved the bill be introduced. Senator Burke seconded the motion. The motion carried.

Senator Frey requested a bill be introduced as a committee bill concerning wire tapping. Senator Feleciano moved the bill be introduced. Senator Feleciano seconded the motion. The motion carried.

Senate Bill 584 - Sheriff's duties in sale of property under execution.

Sheriff Tom Keys, Russell County, stated he is the one who had requested the bill. He explained in Russell County all legal documents are written and filed by the attorney but the taxes that need to be paid are left out. He referred to Section 2, subsection (a), and stated he would like to see sheriffs covered under the statute. He testified with the economic situation as it is they have numerous sales in a month. It seems like attorneys interpret the statute in a different way. When the court is handling disbursements for the sheriff, they want to know when they are being paid out. Mr. Keys said his county commissioners will support him. A committee member inquired what does your county attorney think? Mr. Keys replied, he was in agreement with me. He felt it wasn't my responsibility. Mr. Keys had a copy of a judge's order on a case. Staff will make copies for each committee member.

Senate Bill 608 - Service of summons and petition by mail.

The chairman explained the committee had this bill last year and recommended it for judicial council study. The judicial council did not find time to do the study because of other priorities.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~p.m.~~ on February 22, 1988

Senate Bill 608 continued

Sheriff Mike Hill, Sedgwick County, stated he was also appearing in behalf of the Kansas Sheriffs Association. He testified the language that concerns the sheriffs is in line 23. They would like the word may reinserted in the bill. They are in support of the bill wholeheartedly. He testified during 1987 the Sedgwick County Sheriff's Department, Judicial Services Division, received 148,608 civil summons for service within Sedgwick County. In reviewing current state law, it would seem imperative that current methods of service on certain legal papers be changed to improve service to the courts, attorneys and the general public. A copy of his statement is attached (See Attachment I).

Sheriff Lewis Hoskins, Johnson County, appeared in support of the bill. He testified this would be a cost saving factor for our taxpayers.

Sheriff Clifford Hacker, Lyon County, testified he fully supports the bill. He said we are a smaller county and manpower is a lot less. They served over 12,000 papers per year in the last four years. We have much better things to do if we can. A committee member inquired how are summons served in Lyon? Sheriff Hacker replied, we have two full time process servers. Numerous trips have to be made before we find someone home. He said, we would like to have "may" back in the bill. The majority of the people would accept service by mail.

Sheriff Lyman Reese, Sedgwick County, testified you asked how we served 148,00 papers. We have a lot of over-time. Limited action cases are killing the office. People are not home, sometimes five and six trips are required before we catch someone. The mailing of current subpoenas have worked extremely well. The federal system does not serve civil process. It is all mailed, and it works well. Most people do respond. It will allow us to have nine officers to handle other work that is needed to do. It will be a lot smoother operation. In response to a question Sheriff Reese replied, we may take the paper to the door, however, currently we can't mail anything.

Jim Robertson, SRS Child Support Enforcement Program, testified the Child Support Enforcement Program appreciates and uses the option for mail service currently provided by K.S.A. 60-314, however, we oppose this bill which mandates an unsuccessful attempt at mail service and a 23 day delay prior to using personal service. A copy of his statement is attached (See Attachment II). Mr. Robertson stated the way the bill is written it will prevent us from using our own service. A committee member inquired if we put this back to discretionary that would take care of your problem, wouldn't it? Mr. Robertson replied yes. There are amendments that can be made to help us.

Matt Lynch, Kansas Judicial Council, explained there is no incentive for parties to use process other than sheriffs process. Senator Gaines then presented background information to the bill. Mr. Lynch stated to change "shall" back to "may" will not do any good. You have to have a provision in the bill where you

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY
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Senate Bill 608 continued

have your own process services. The problem is where the responsibility should be for process service. The chairman pointed out an order came through that a study be made of Chapt. 61 in order to rewrite it.

The chairman announced the committee will work on the bill Wednesday or Friday.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-22-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Robertson	Topeka	CSE
KAY BILLEAUX	TOPEKA	OJA - KS SUPREME COURT
CLIFFORD HACKER	EMPORIA, Ks	LYON Co. SHERIFF
Randy Thomas	Emporia	" "
Lewis Hopkins	500 county sheriff dept	
Tom Keys	1282 Russell Ki.	Russell Sheriff Dept
Matt Lynch	Topeka Topeka	Judicial Council
LAURIE HARTMAN	TOPEKA	KS. BAR ASSN.
JANET STUBBS	"	#BAK
JOE D. MORRIS	TOPEKA	KLSI
Tom Percell	TOPEKA	KSA
Niobe Hill	Wichita	Sedgwick COUNTY SHERIFF
Lyman Reese	"	"
KAREN McCLAIN	TOPEKA	KAR
Patricia Clark	Manhattan	Girl Scouts
Rosemary Kutz	Topeka	Girl Scouts
M. Hawver	"	Capital-Jawing

Att. III

PROPOSED CHANGES IN THE METHOD
USED TO OBTAIN SERVICES OF CHAPTER
60 & CHAPTER 61 CIVIL PROCESS

During 1987, the Sedgwick County Sheriff's Department, Judicial Services Division, received 148,608 civil summons for service within Sedgwick County. This number of cases is served by nine (9) officers working 20 days per month. Each officer, on the average, will receive 70 plus new cases each working day. Obviously given the constraints of driving time, waiting time on some services, weather, etc., the officer have an impossible task of attempting service on that many cases per month. Because of time constraints on most papers, the officers only get one chance to make service or the paper must be returned as unable to locate within the specified time frame.

In reviewing current state laws, it would seem imperative that current methods of service on certain legal papers be changed to improve service to the courts, attorneys and the general public.

Kansas law, specifically, Section 20 KSA 61-1803 allows, in our opinion, for a change in the current method of service Chapter 61, limited action cases which represents approximately 30% of the current work load and which have less restrictive guidelines for service. This would be the logical area of change in current state laws. Changing the state laws in this area, would reduce the amount of cases that are physically handled by the officers by 50,000 or more cases.

Limited Action cases, are those cases that the amount in controversy including damages, costs and interest does not exceed 5,000.00 dollars.

Att. I

It would allow greater flexibility by the issuing attorneys to manage their time spent in court. The change that we are requesting would allow the defendants the opportunity to contact the issuing attorney several days before a scheduled court appearance.

The current system of the officers attempting to make service in time to comply with current procedures and laws is prohibitive and counterproductive to streamlining the court system, through delays and rescheduling of court dates for both the attorneys and defendants.

Our proposal is based upon KSA 61-1803 which states: "That service may be made by attorneys admitted to practice of law before the Supreme Court of Kansas."

For LIMITED ACTION cases, we are proposing a system whereby the action or case is mailed to the defendant(s).

The issuing attorney would first file the action with the Clerk's Office, as they currently are doing. At this time the clerk would fix a court date allowing enough time for the mailing of the legal papers to the defendant(s) and for the defendant(s) to respond. This could be accomplished either by registered mail or simply having the defendant(s) mail back an enclosed post card, signed, stating that the defendant(s) have received the legal papers and acknowledge receipt of those papers.

Another possibility is enclosing a two part type of receipt that is signed by the defendant(s) and returned to the issuing attorney while the defendant(s) retain one copy for their records.

Once the issuing attorney received this acknowledgment they would make the proper return and file it with the Clerk's Office. At this time they would know that the defendant(s) had received the papers and the issuing attorney could better schedule their time for court.

The time that we feel should be allowed for this above type of procedure to take place should be no less than 20 days. This allows the defendant(s) time to respond, even given weekends, holidays, etc.

If the defendant does not respond within the mandated time period, other courses of action then would be available to the issuing attorney per KSA 61-1805, which would be the current system of having the Sheriff serve the paper as is currently done on all cases.

Another effect of this proposed legislation would also assist the attorneys and the Sheriff's Department by allowing the officers to spend more time attempting service on cases that require personal service or other actions.

By reducing the cases physically handled by the officers of approximately 50,000 the officers would be receiving about 45 cases per day compared to the 70 plus that they are not receiving.

Budgetary constraints limit the amount of officers that each division is allocated. The current situation will only continue to escalate as each year the number of cases filed continues to climb from the previous year. The officers can only accomplish a certain amount of work each day given the physical limitations of driving time, etc. and the situation must be solved with new and innovative legislation.

This proposed legislation will be as or more important to smaller counties that have a very limited number of officers available to serve legal process. Compared with the smaller number of cases that they would receive they would realize a tremendous benefit by reducing their physical handling of legal process. This would allow the smaller departments to concentrate on other public needs and requests.

This proposed legislation could very easily be incorporated into the service of Chapter 60 legal papers. It should be noted that both K.S.A. 60-314 and 61-1806, with the exception of one word will effect the change that we are proposing. The only action required would be the substitution of the work SHALL for the word MAY in both statutes. This is what we would propose to streamline the system that is currently being used.

PROPOSED CHANGES TO K.S.A. 60-314: Summons and petition;
service by first-class
mail on individual,
corporation or partner-
ship.

The following is a guideline for re-writing of the current statute. Key words that we feel should be in any new statute are underlined.

60-314

(a) Notwithstanding any other method of serving the summons and petition upon a defendant, a summons and petition may be served upon a defendant of any class referred to in subsections (a) and (e) of K.S.A. 60-304 and amendments thereto by mailing a copy of the summons and of the petition by first-class mail, postage prepaid,

to the person to be served, together with two copies of a notice and acknowledgment of receipt of summons and petition and a return envelope, postage prepaid, addressed to the sender.

(b) Unless good cause is shown for not doing so, the court shall order the payment of the reasonable costs of obtaining personal service by the person served, if such person does not complete and return the notice and acknowledgment of receipt of summons and petition within 20 days after its mailing.

(c) If service is made under subsection (a), return shall be made by the sender's filing with the court of acknowledgment of receipt of summons and petition.

(d) Service of process shall be considered obtained under K.S.A. 60-203 and amendments thereto upon the execution of the acknowledgment of receipt of summons and petition in order for an action to be deemed commenced.

(3) The notice and acknowledgment of receipt of summons and petition referred to in subsection (a) shall be in substantially the same form as is currently shown in K.S.A. 60-314 subsection (e).

Testimony Regarding S.B. 608

Submitted by:
Jim Robertson
Child Support Enforcement Program
Administrator
296-3237

The Child Support Enforcement Program appreciates and uses the option for mail service currently provided by K.S.A. 60-314. However, we oppose S.B. 608 which mandates an unsuccessful attempt at mail service and a 23 day delay prior to using personal service for the following reasons:

- 1) The allowance of 20 days for return of the acknowledgement is too long in our opinion, especially when you consider K.S.A. 206(e), which adds three days to the time allowed when notice is served by mail. A 23 day delay can mean a great deal to a custodial parent and child in need of a support order. If the committee feels this bill has merit, we recommend that the time limit for return of the acknowledgement be shortened to seven days, (which would allow ten days in accordance with K.S.A. 206(e).)
- 2) In the child support enforcement business, obtaining service of process on numerous elusive absent parents or putative fathers is one of the most time consuming aspects of our job. Many times the only way we can serve an individual who has exhibited the propensity to "state-hop" or to avoid service is to catch them by surprise. If S.B. 608 is enacted, we would be required to give such individuals a 23 day notice that we will be attempting personal service.
- 3) In the metropolitan areas, CSE has contracts with special process servers because the sheriff is often ineffective. If S.B. 608 is enacted, we would not have the freedom to use our own process servers until after a mailing was attempted.

To make allowances for cases in which the defendent is likely to avoid service and for situations in which a special process server is used, CSE recommends an amendment which would allow the petitioner to **obtain leave of the court to immediately use another type of service.**

- 4) Problems with statutes of limitations could occur. K.S.A. 60-203 defines "commencement of the action" as:
 - a) date of filing if service is obtained within 90 days (court may extend to 120 days); and,
 - b) date of service if service if later than 90 days.

By using up 23 days and by tipping off defendents that personal service will be attempted if they don't mail the acknowledgement, the statute of limitations could prevent the pursuit of certain types of legal actions.

Att. II

- 5) Orders of attachment as provided for in K.S.A. 60-706 must, by their nature, be personally served by the sheriff, (property is taken into custody.) By statutory reference, service of the attachment is in accordance with Article 3 of Chapter 60.

As the Kansas Title IV-D agency, SRS is required by federal law to use an expedited income withholding process to enforce support within limited time frames, (45 days from date of initiation.) The current Income Withholding Act, K.S.A. 23-4,107, allows for service of the notice of delinquency on the obligor, "by certified mail, return receipt requested or in the manner for service of a summons pursuant to Article 3 of Chapter 60."

If S.B. 608 is enacted, we would fail to comply with federal time requirements for initiation or completion of income withholding if we could not rely on the immediate use of personal service in some cases. Consequently, we propose the attached amendment to K.S.A. 23-4,107 which would allow us to use personal service of the notice of delinquency on the obligor as a matter of discretion.

JAR:tmd

23-4,107. Order to withhold income; when effective; effect of order; service of order; notice of delinquency; voluntary withholding. (a) Any new or modified order for support entered on or after January 1, 1986, shall include a provision for the withholding of income to enforce the order of support. Unless the order provides that income withholding will take effect immediately, withholding shall take effect only if: (1) There is an arrearage in an amount equal to or greater than the amount of support payable for one month or, if a judgment is granted pursuant to K.S.A. 39-718a and amendments thereto, a lump sum due and owing; (2) at least all or part of one payment or a lump sum judgment is more than 10 days overdue; and (3) there is compliance with the requirements of this section.

(b) If the court has issued an order for support, with or without a conditional order requiring income withholding as provided by subsection (a), the obligee or a public office may apply for an order for withholding by filing with the court an affidavit stating: (1) That an arrearage exists in an amount equal to or greater than the amount of support payable for one month; (2) that all or part of at least one payment is more than 10 days overdue; (3) that a notice of delinquency has been served on the obligor in accordance with subsection (f) and the date and type of service; (4) that the obligor has not filed a motion to stay service of the income withholding order; and (5) a specified amount which shall be withheld by the payor to satisfy the order of support and to defray any arrearage. Upon the filing of the affidavit, the court shall issue an order requiring the withholding of income without the requirement of a hearing, amendment of the support order or further notice to the obligor.

For purposes of this subsection, an arrearage shall be computed on the basis of support payments due and unpaid on the date the notice of delinquency was served on the obligor.

(c) An order issued under this section shall be directed to any payor of the obligor and shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage, subject to the limitations set forth in K.S.A. 1985 Supp. 23-4,109 and amendments thereto. The order shall include notice of and direction to comply with the provisions of K.S.A. 1985 Supp. 23-4,108 and 23-4,109, and amendments thereto.

(d) An order issued under this section shall be served on the payor and returned by the officer making service in the same manner as an order of attachment.

(e) An income withholding order issued under this section shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court. If the obligor changes employment or has a new source of income after an income withholding order is issued by the court, the new employer or income source, if known, must be served a copy of the income withholding order without the requirement of prior notice to the obligor.

(f) No sworn affidavit shall be filed with the court issuing the support order pursuant to subsection (b) unless it contains a declaration that the obligee or public office has served the obligor a written notice of delinquency because an arrearage exists in an amount equal to or greater than the amount of support payable for one month, that all or part of one payment is more than 10 days overdue and that the notice was served on the obligor by certified mail, return receipt requested, ~~or in the manner for service of a summons pursuant to article 3 of chapter 60 of the Kansas Statutes Annotated~~ at least seven days before the ~~date~~ the affidavit is filed. If service is by certified mail, a copy of the return receipt shall be attached to the affidavit. The notice of delinquency served on the obligor must state: (1) The terms of the support order and the total arrearage as by personal service

of the date the notice of delinquency was prepared; (2) the amount of income that will be withheld; (3) that the provision for withholding applies to any current or subsequent payors; (4) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (5) the period within which the obligor must file a motion to stay service of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (6) the action which will be taken if the obligor contests the withholding.

In addition to any other penalty provided by law, the filing of an affidavit with knowledge of falsity of the declaration of notice is punishable as a contempt. The obligor may, at any time, waive in writing the notice required by this subsection.

(g) On request of an obligor, the court shall issue a withholding order which shall be honored by a payor regardless of whether there is an arrearage.

History: L. 1985, ch. 115, § 3; L. 1986, ch. 137, § 11; July 1.