

Approved April 27, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~am~~ p.m. on March 27, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Lawrence and Peterson, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

COMMITTEE ACTION ON BILLS:

S.B. 48 - First degree murder to include death committed in perpetation of abuse of a child or aggravated battery of a child

The Chairman explained the Committee had not held a hearing on S.B. 48, however, the Committee did hold a hearing on H.B. 2057, which is the House version of S.B. 48. The House bill would have created a new crime. S.B. 48 includes the perpetation of child abuse as one of the elements for murder in the first degree. K.S.A. 21-3609 defines child abuse as willfully torturing, cruelly beating or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years. Abuse of a child is a class D. felony.

Representative Crowell moved to report S.B. 48 favorably for passage. Representative Gomez seconded the motion. The motion passed.

S.B. 126 - Municipal judges, training, testing and continuing judicial education

A motion was made by Representative Hochhouser and seconded by Representative Solbach to remove S.B. 126 from the table. The motion passed.

Representative Hochhouser moved and Representative Buehler seconded the motion to report S.B. 126 favorably for passage.

After Committee discussion, the motion failed.

Representative Whiteman moved to strike the funding sections. Representative Douville seconded the motion. The motion passed.

Representative Sebelius moved and Representative Roy seconded to delete the language in line 52 "or as provided by the Kansas Municipal Judges Association." The motion passed.

Representative Sebelius moved to amend line 55 by inserting a period after the word "here" and striking the balance of the line, and striking line 56. Representative Solbach seconded the motion. The motion passed.

Representative Solbach moved to amend subsection C on page 2 to read "The Supreme Court shall administer the training, testing and continued judicial education provided for in this Section or may contract with another person or organization for that service." The motion was seconded and passed.

Representative O'Neal moved and Representative Solbach seconded to strike on line 31 and 32 "Such examination and training shall be administered without charge and". This amendment should be made wherever appropriate in the bill. The motion passed.

A motion was made by Representative Shriver to strike line 24 and to the comma in line 25. Representative Scott seconded the motion. The motion failed.

CONTINUATION SHEET

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Representative Vancrum moved to table S.B. 126. The motion was seconded and the motion passed.

H.B. 2353 - Oil and gas owner's lien act

Representative Crowell moved to remove H.B. 2353 off the table. Representative Buehler seconded the motion. The motion failed.

S.B. 155 - Overhead power line safety act

Representative Vancrum moved to strike in Sec. 3, line 55, after the word "line" through line 59, and to add to New Sec. 8 the language "the national electrical safety code, which would otherwise be applicable". Representative Sebelius seconded the motion. The motion passed. (44, # 1)

Representative Hochhouser moved to strike subsection (b) of Sec. 6, the liability provision. Representative Solbach seconded the motion. The motion failed.

A motion was made by Representative Snowbarger and seconded by Representative Jenkins to insert in line 79 on page 2, after the phrase "estimated amount" the language "or a surety arrangement in lieu of advanced payment" and again in line 81 after the word "payment". The motion passed.

Representative Snowbarger moved to amend line 124 to read "the provisions of this act shall be presumed to be liable for all damage to the". The motion was seconded by Representative Vancrum.

The motion was withdrawn.

Representative Snowbarger made a conceptual motion to incorporate some of the language from Sec. 11 in H.B. 2453 into Sec. 6 (b) of S.B. 155 regarding civil action for property damage or personal injuries; that violation of this raises a rebuttable presumption of negligence on the part of the individual that violated the provision; and to include New Sec. 8, as amended, into Sec. 6 as subsection (c), and renumbering the sections. Representative Sebelius seconded the motion. The motion passed.

Representative Solbach moved to amend Sec. 6 to read "Every person or public utility as defined herein who violates any of the provisions of this act may be subject to a civil penalty set by the court of not more than \$1,000 for each violation. Actions under this act may be brought by a person, public utility, or a county or district attorney, in the county in which the violation occurred. Civil penalties sued for and recovered by the County Attorney or District Attorney shall be paid into the general fund of the county. Civil penalties in other cases are to be paid to the person or public utility bringing the lawsuit. The motion was seconded by Representative Whiteman. The motion failed.

Representative Walker moved to amend line 28 by striking "such" and inserting "any". The motion was seconded by Representative Jenkins. The motion passed.

Representative Buehler moved to report S.B. 155, as amended, favorably for passage. The motion was seconded by Representative Scott. The motion passed.

S.B. 301 - Discharge of voluntary patients under treatment act for mentally ill persons

A motion was made by Representative Snowbarger and seconded by Representative Walker to table S.B. 301. The motion passed.

S.B. 214 - Assessment of costs of transporting correctional inmates to court proceedings

A motion was made by Representative Roy and seconded by Representative Walker to report S.B. 214 favorably for passage. The motion failed.

Representative Jenkins requested to be recorded as voting "no".

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Representative Adam moved to report S.B. 214 adversely. Representative Everhart seconded the motion.

A motion was made by Representative Snowbarger to table S.B. 214. The motion was seconded by Representative Walker. The motion passed.

The Committee meeting was adjourned at 5:35 p.m. The next meeting will be Tuesday, March 28, 1989, at 3:30 p.m. in room 313-S.

46 (e) "Public utility" means and includes those entities defined in
47 K.S.A. 66-104, and amendments thereto, municipally owned elec-
48 trical systems and electric cooperatives as defined in K.S.A. 17-4601
49 *et seq.*, and amendments thereto.

50 Sec. 3. Unless danger against contact with high voltage overhead
51 lines has been guarded against as provided by section 3 4, no person,
52 individually or through an agent or employee, shall store, operate,
53 erect, maintain, move or transport any tools, machinery, equipment,
54 supplies or materials, within 10 feet of any high voltage overhead
55 line, ~~or perform or require any other person to perform, any function~~
56 ~~or activity upon any land, building, highway or other premises if at~~
57 ~~any time during the performance thereof it could reasonably be~~
58 ~~expected that the person performing the function or activity could~~
59 ~~move or be placed within 10 feet of any high voltage overhead line.~~

60 Sec. 4. (a) When any person desires to temporarily carry out
61 any function or activity in closer proximity to any high voltage over-
62 head line than is permitted by this act, the person or persons re-
63 sponsible for the function or activity shall notify the public utility
64 which owns or operates the high voltage overhead line of the function
65 or activity and shall make appropriate arrangements with the public
66 utility for temporary mechanical barriers, temporary deenergization
67 and grounding of the conductors, temporary rerouting of electric
68 current or temporary relocating of the conductors before proceeding
69 with any function or activity which would impair the clearances
70 required by this act.

71 (b) A person or persons requesting a public utility to provide
72 temporary clearances or other safety precautions shall be responsible
73 for payment of only those costs incurred by such utility in the
74 temporary rerouting of electric current or the temporary relocating
75 of the conductors. Upon request, a public utility shall provide a
76 written costs estimate for the work needed to provide temporary
77 clearances or other safety precautions. A public utility is not required
78 to provide such clearances or other safety precautions until payment
79 of the estimated amount has been made. Unless otherwise agreed
80 to, a public utility shall commence work on such clearances or other
safety precautions within three working days after payment has been
made.

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120 torney or district attorney shall be paid into the general fund of the
121 county where the proceedings were instigated.

122 (b) If, as a result of a violation of this act, a physical or electrical
123 contact with any high voltage overhead line occurs, the person vi-
124 olating the provisions of this act shall be liable for all damage to the
125 facilities of the public utility which owns or operates such line and
126 for any personal injuries or other damages incurred by any person
127 as a result of such contact.

128 Sec. 7. This act does not apply to:

129 (a) Construction, operation or maintenance by an authorized per-
130 son as defined herein;

131 (b) highway vehicles or agricultural equipment which in normal
132 use may incidentally pass within the clearances prescribed by this
133 act;

134 (c) the operation or maintenance of any equipment traveling or
135 moving upon fixed rails;

136 (d) governmental entities responding to an emergency situation;
137 or

138 (e) moving buildings or structures on streets, alleys, roads and
139 highways pursuant to K.S.A. 17-1914 *et seq.*, and amendments
140 thereto.

141 ~~[New Sec. 8. Nothing in this act is intended to limit or modify~~
142 ~~the provisions of K.S.A. 60-258a as amended.]~~ : (1)

143 Sec. 8 [9]. If any provision of this act or the application thereof
144 to any person or circumstances is held invalid, the invalidity does
145 not affect other provisions or applications of this act which can be
146 given effect without the invalid provision or application, and to this
147 end the provisions of this act are severable.

148 Sec. 9 [10]. This act shall take effect and be in force from and
149 after its publication in the statute book.

150

, and amendments thereto; or
(2) the national electrical safety code, which
would otherwise be applicable