

Approved April 25, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

2:25 ~~am~~/p.m. on February 27, 1990 in room 522-S of the Capitol.

All members were present except: Senators Gaines and Yost who were excused.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Cliff Stubbs, Legislative Intern for Senator Wint Winter, Jr.
Chip Wheelen, Kansas Psychiatric Society.
Senator Don Montgomery

The Chairman opened the meeting by returning the Committee's attention to SB 524.

SB 524 - concerning civil procedure; relating to wrongful death actions; amount of damages.

The Chairman informed the committee that it was the consensus of all parties involved, including a number of committee members, the language of the amendment adopted for SB 524 was flawed and would not have the results that the committee intended.

Senator Bond, having voted on the prevailing side, moved to reconsider the committee's action on SB 524. Senator Rock, having voted on the prevailing side, seconded the motion. The motion carried.

Senator Bond, having voted on the prevailing side, moved to reconsider the action on the adoption of the amendment to SB 524. Senator Rock, having voted on the prevailing side, seconded the motion. The motion carried.

The Chairman stated that he has asked for appropriate language from the Kansas Trial Lawyers Association or other parties interested in the bill.

The Chairman turned the meeting over to Vice Chairman Moran who opened the hearing for SB 536.

SB 536 - concerning children and minors; relating to a child in need of care; termination of parental rights.

Cliff Stubbs, Legislative Intern for Senator Winter, described to the committee how line 17 "a preponderance of the evidence", is unconstitutional by virtue of a Supreme Court decision on a New York State statute that mirrored the language in SB 536.

Chip Wheelen, Kansas Psychiatric Society, testified in support of SB 536. (ATTACHMENT I)

The concluded the hearing for SB 536.

Senator Morris moved to amend SB 536 by striking "a preponderance of the" on line 17 and insert "clear and convincing". Senator Bond seconded the motion. The motion carried.

Senator Morris moved to recommend SB 536 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

The hearing was opened for SB 624.

SB 624 - concerning divorce; relating to child custody; appointment of counsel for child in custody dispute.

Senator Don Montgomery, sponsor of the bill, presented SB 624. He stated that the best interest of children would be served by passage of this legislation; allowing for appointment

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 522-S, Statehouse, at 2:25 ~~am~~ p.m. on February 27, 1990

of independent counsel for children in custody disputes helps protect the children's safety or health.

As no other conferees appeared, this concluded the hearing for SB 624.

Senator Moran turned the committee's attention to SB 468.

SB 468 - concerning crimes, punishment and criminal procedure; relating to authorized disposition.

Senator Rock moved to recommend SB 468 favorable for passage. Senator Morris seconded the motion. The motion carried.

Senator Parrish moved to amend SB 624 on page 3, line 7 to strike "shall" and insert "may". Senator Feleciano seconded the motion. The motion carried.

Senator Parrish moved to recommend SB 624 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

Senator Moran opened the hearing for SB 641.

SB 641 - concerning payment of the cost of transportation of alleged juvenile offenders to an from hearings.

No conferees appeared to testify at this time.

It was the consensus of the committee to allow SB 641 to rest in the committee until such time it is requested to be heard again.

The meeting was adjourned at 3:45 p.m.



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February 27, 1990

TO: Senate Judiciary Committee
FROM: Kansas Psychiatric Society *Chip Wheelen*
SUBJECT: Senate Bill 536; Termination of Parental Rights

Thank you for this opportunity to express our support for the provisions of SB 536. This bill was introduced at the request of the Kansas Psychiatric Society.

You will note that SB 536 amends current law in two different ways. We respectfully suggest that these issues be considered separately. The first, found in subsection (a), would reduce the burden of proof from that of "clear and convincing evidence" to "a preponderance of the evidence." We believe that this change in the burden of proof would constitute a much needed improvement in the status of children's rights in Kansas. As you are well aware, there have been instances when parental rights should have been terminated, but were not. You have heard testimony to this effect in the past.

The second issue in SB 536 is one which we believe is extremely important. Currently, a judge may consider any information that he or she deems applicable in the case. In addition, there are eight criteria that are statutorily prescribed, if applicable. We respectfully recommend that a ninth criterion be added which would prescribe that the court consider a statement from a person licensed to practice medicine and surgery that the needs of the child would be better served if parental rights are terminated.

As you are probably aware, there are instances when a child reveals information to a primary care physician or psychiatrist which is extremely revealing as to the circumstances of the home environment. This information is, however, confidential and were it not confidential, would probably result in an inhibited therapeutic relationship between the child/patient and the physician. If the child were to believe that the physician had a duty to reveal such information, the child would never disclose that information in the first place. This is because oftentimes the information has to do with abusive situations resulting in feelings of shame experienced by the child. Other situations might involve evidence as to the lifestyle of one or both parents which would not be conducive to a child's development. In some instances, the child may actually be at risk of harm.

We believe that such information should remain privileged, but that the Legislature should express confidence in the ability of physicians to exercise good judgement in determining when a child would be better served by terminating the rights of that child's parents. It is for these reasons that we respectfully request that you recommend SB 536 for passage. Thank you for your consideration.

CW:lg

Senate Judiciary Committee
2-27-90 p.m.
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