

Approved 6-27-90
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~xxx~~ on March 5, 19 90 in room 514-S of the Capitol.

All members were present except: Senator Gaines who was excused.

Committee staff present:

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

Conferees appearing before the committee:

The Chairman called the meeting to order by opening the floor to discussion and action on bills previously heard by the Committee.

SB 305 - concerning care of children; relating to certain persons prohibited from maintaining homes for children; concerning validation of abuse or neglect.

Senator Feleciano moved to report SB 305 adversely. Senator Morris seconded the motion. The motion carried.

SB 231 - concerning crimes and punishments; relating to endangering a child.

A memorandum was distributed to the committee from Cliff Stubbs, Legislative Intern for Senator Winter, with suggested amendments. The amendments would clarify section (1) and provide a definition for household. (ATTACHMENT I)

Senator Rock moved to amend SB 231 by adopting the proposed balloon. Senator Petty seconded the motion. The motion carried.

Senator Petty moved to amend SB 231 by including sexual abuse in the last sentence of subsection (c) on page 1. Senator Moran seconded the motion. The motion carried.

Senator Bond moved to amend SB 231 to make the penalty for acts of subsection (c) a class B misdemeanor. Senator Petty seconded the motion. After discussion by the Committee, the motion and second were withdrawn.

Senator Rock moved to amend SB 231 by striking "causing or" from line 22, amending line 23 to read as line 34 through 37, making acts of subsection (a) class A misdemeanors, and acts of subsection (c) class B misdemeanors. Senator Bond seconded the motion.

Senator Bond made a substitute motion to rerefer SB 231 to the Ways and Means committee to keep it alive and ask that it be returned to the Committee for additional study.

After discussion by the committee, Senator Bond withdrew his substitute motion to rerefer SB 231.

Senator Rock withdrew his motion to amend SB 231, Senator Bond withdrew his second to the motion.

Senator Parrish moved to amend SB 231 to make the act in subsection (c) a class B misdemeanor. Senator Bond seconded the motion. The motion carried.

The Chairman noted that it is not the Committee's intention to alter the existing "failure to report" statutes by passing of SB 231.

Senator Moran moved to strike section (3) from SB 231. Senator Parrish seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 5, 1990.

Senator Rock moved to recommend SB 231 favorable for passage as amended. Senator Martin seconded the motion. The motion carried.

SB 299 - concerning the residential landlord and tenant act; relating to disposition of personal property of tenant.

Senator Parrish moved to recommend SB 299 favorable for passage. Senator Martin seconded the motion. The motion carried.

SB 611 - concerning civil actions; creating a cause of action by educational institutions against persons who cause institution to be in violation of national collegiate athletic association rules.

Senator Parrish moved to recommend SB 611 favorable for passage. Senator Rock seconded the motion. The motion failed.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: March 5, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bryan Land	12309 Granada	Page / Blue Valley Wash
Brian Kohnack	9504 Reinhardt Ln	S.M. EAST / Page
Doug Young	8216 Roe	SM East / Page
LM CORNISH	Topu	Ks Assn P/C
M. Hawver	"	Capitol Journal
TO Anderson	"	RSCPA
Ju Allen	"	KC PAA
Paul Shelby	"	OJA
William Alden	"	ICTA
Barbara Joseph	"	AP
Jon Smith	"	K Bar Assoc
Chip Wheelen	"	Ks Med. Society

March 5, 1990

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

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COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY

VICE-CHAIRMAN: WAYS AND MEANS

MEMBER: JOINT COMMITTEE ON ECONOMIC

DEVELOPMENT

JOINT COMMITTEE ON SPECIAL CLAIMS

AGAINST THE STATE

ECONOMIC DEVELOPMENT

KANSAS JUDICIAL COUNCIL

TO: Senate Judiciary
FROM: Cliff Stubbs
DATE: 2/27/90
RE: Senate Bill 231

After researching Senate Bill 231, I have discovered two issues of concern, specifically a vagueness problem with Section 1.(1)(a) and a definition problem with Section 1.(1)(c). As a result, Senate Bill 231 should be amended.

Initially, K.S.A. 21-3608(1)(a) is currently unconstitutional. The Kansas Supreme Court in State v. Meinert, 225 Kan. 816 (1979) held the phrase "unjustifiable physical pain or mental distress" to be unconstitutionally vague. Senate Bill 231 does not alter this language. As a result, if unaltered it will continue to be unenforceable. The proposed amendment to Senate Bill 231 attempts to parallel the language of K.S.A. 21-3608(1)(b) which the court did not invalidate. The proposed amendment does maintain the original distinction between K.S.A. 21-3608(1)(a) and (b).

The second issue of concern centers on the word "household" in lines 32 and 33 of Senate Bill 231. Jean M. Schmidt, an Assistant District Attorney in Shawnee County, believes that unless the word is defined, Senate Bill 231 would be fraught with confusion. The addition to line 37 provides this definition. It purposely abstains from defining the word "household" in terms of specific relationships. It also avoids the issue of a minimum period of time one would have to resid with the child in order to become a member of the "household."

With the above suggested amendments, Senate Bill 231 should be able to become a more workable and enforceable statute.

enc.

Senate Judiciary Committee
3-5-90
Attachment I page 1 of 2

SENATE BILL No. 231

By Senators Winter, Moran and Oleen

2-8

AN ACT concerning crimes and punishments; relating to endangering a child; amending K.S.A. 21-3608 and repealing the existing section.

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

Section 1. K.S.A. 21-3608 is hereby amended to read as follows: 21-3608. (1) Endangering a child is willfully:

(a) ~~Causing or permitting a child under the age of eighteen (18) 18 years to suffer unjustifiable physical pain or mental distress; or~~

Unreasonably be injured either physically or mentally.

(b) unreasonably causing or permitting a child under the age of eighteen (18) 18 years to be placed in a situation in which its life, body or health may be injured or endangered; or

(c) failing to report abuse of a child to the state department of social and rehabilitation services, a licensed social worker, any person licensed to practice the healing arts, dentistry, optometry or psychology or a person licensed as a professional or practical nurse or the appropriate law enforcement agency, by any adult member of a household, who has reason to believe such abuse occurred, when such abuse occurs to a child living within the same household caused by another adult. For the purposes of this subsection, abuse of a child or abuse is willfully torturing, cruelly beating or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

An adult member of a household is anyone who resides with the child during the time of abuse.

(2) Nothing in this section shall be construed to mean a child is endangered for the sole reason his such child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

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~~(2)~~ (3) It shall be an affirmative defense to a prosecution of endangering a child that the adult member of the household, in which such abuse occurs to a child living within the same household, is also a victim of physical abuse or threats of physical abuse for reporting such abuse of the child.

(4) Endangering a child is a class A misdemeanor.

Sec. 2. K.S.A. 21-3608 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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