

Approved 2-28-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~am~~/p.m. on February 5, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Sebelius, Snowbarger and Hochhauser who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Mr. Onan C. Burnett, USD # 501
Paul Shelby, Office of Judicial Administration
Ron Wurtz, Shawnee County Defender's Office
Jim Clark, District Attorney's Association

The Chairman called the meeting to order.

Mr. Onan C. Burnett, USD # 501, Topeka, Kansas, appeared and requested legislation regarding school safety, making the possession of firearms on the school grounds illegal.

Representative Rock made a motion to introduce the proposed legislation. Representative Smith seconded the motion. The motion carried.

Revisor's Staff briefly reviewed HB 2057, extending the time limitations on the prosecution of juvenile offenders for certain crimes, noting it had been requested by the Office of Judicial Administration.

Paul Shelby, Office of Judicial Administration, appeared in support of HB 2057. (See Attachment # 1).

Ron Wurtz, Shawnee County Public Defender's Office, commented regarding HB 2057. Mr. Wurtz said if a crime were committed by a 12 year old, he would be within the jurisdiction before the time ran out, but if he were 14 years old or older, the court would run out of jurisdiction; that he worries that the bill is part of a trend to treat juveniles more like adults; that the bill is favorable to the victim's point of view; that the Defender's Office takes neither a "for" or "against" position regarding HB 2057.

A committee member asked how the juveniles are being treated more like adults. Mr. Wurtz said over the years juvenile laws have become more similar to adult laws and harsher; however, HB 2057 doesn't necessarily do this.

Jim Clark, District Attorney's Association appeared in support of HB 2057. Mr. Clark said the bill is desirable in the victim's perspective.

There being no further conferees, the hearing on HB 2057 was closed.

The Chairman called for action on HB 2009, regarding child custody and visitation changed to residency and parenting rights in the domestic relations statutes. Re: Prop. 15.

Revisor's Staff explained that through interim study, it was noted that the non-custodial parent was perturbed at the terms "visitation" and "custody"; that the State of Washington has changed the terms to "parenting rights" and "residency" of the child; that in the criminal code and domestic relations areas the terms have been changed; that on Page 12, Line 16, a conferee requested "if the court does not order joint equal residency".

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 x&m./p.m. on February 5, 1991.

Representative Vancrum made a motion to amend HB 2009, regarding this language.

A committee member noted this would be a very substantive change of his motion. Representative Vancrum amended his motion to change terminology. The motion died for lack of a second.

Revisor's Staff noted a conferee had also requested making the legislation retroactive.

Representative Parkinson made a motion to amend HB 2009 by eliminating the word "parenting" whenever it occurs in the bill and go back to the word "visitation". Representative Garner seconded the motion.

Discussion followed. A committee member noted that the intent is to come up with a joint residency, joint parenting plan.

The motion carried.

A committee member noted that many repeal statutes will be affected by the proposal if adopted.

Revisor's Staff informed the committee that the changed legislation had been proposed by Gary Kirchman, SRS, Johnson County.

A committee member referred to Page 12 of the (bill in the joint residency paragraph, the concept of implementation of the joint residency order) and suggested that a sub-committee might work on the concept of having joint residency orders clarify the time periods the child would spend with parents, regardless of how it is termed, and bring back a suggestion of how that could be implemented into a joint residency plan.

The Chairman appointed a sub-committee to work on HB 2009. Appointees are: Representative Heineman, Chairman; Representative Parkinson and Representative Everhart.

The Chairman called for consideration of the minutes of the meeting of January 24, 1991. Representative Smith made a motion to approve the minutes. Representative Scott seconded the motion. The motion carried.

Written testimony is included as a part of these minutes for the following:

- (1) Letter, dated 1/28/91, from Depaw Law Firm, Neodesha, Kansas, to Kansas Bar Association, regarding HB's 2006, 2007 and 2008. (Attachment # 2).
- (2) Memo, dated 1/31/91, from David P. Woodbury, regarding HB's 2009, 2008, and 2006, (Attachment # 3).

The meeting adjourned at 4:20 P.M. The next meeting of the committee is scheduled on Wednesday, February 6, 1991, at 3:30 P.M. in room 313-S.

House Bill No. 2057
House Judiciary Committee
February 5, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2057. This bill would amend K.S.A. 38-1603, time limitations on prosecution for juvenile offenders.

This is a proposal from Judge Lee Nusser, Stafford County, supported by the District Magistrate Judges Association and our office.

Currently, proceedings under the juvenile offender code must be commenced within two years after the act giving rise to the proceedings is committed, with a couple of exceptions. (Murder in the first and second degree, can be commenced at any time). Sex offenses are not an exception to the current law.

Time limitations for sex offenses contained in K.S.A. 21-3106, which applies to adults, is five years.

This proposal would set the time limitations for sex offenses, for both adult and juvenile at five years.

The judges report that there are now more of these types of cases than in the past. These types of offenses show up after the two-year period and Judge Nusser indicated that he had to dismiss a case due to the two-year limitation.

We respectfully urge the committee to consider this proposal and pass the bill favorably.

HJUD
2/5/91
"Attachment 1"

DEFEW LAW FIRM
820 MAIN STREET
POST OFFICE BOX 313
NEODESHA, KANSAS 66757

HARRY L. DEFEW
DOUGLAS D. DEFEW
DENNIS D. DEFEW

January 28, 1991

AREA CODE 316
TELEPHONE 325-2620
FACSIMILE 325-2838

Ms. Laurie Hartman, Legal Assistant
Kansas Bar Association
Box 1037
Topeka, Kansas 66601-1037

VIA FACSIMILE (913) 234-3813

RE: HB 2006, 2007, 2008

Dear Laurie:

Thank you for your memo of January 24, 1991. Here are my comments.

HB 2006: I have no opinion as I do not regularly practice in counties with a court trustee system.

HB 2007: I have some problems with this bill. The main problem is that the legislature would be mandating health insurance on children of divorce and yet children of intact families have no such protections. It possibly has some serious constitutional problems.

A second problem I have with this bill is the cost to the persons involved. True, you and I realize that it is foolish to not have medical insurance of some sort. This is a poor area of the state. Unfortunately, here in S.E. Kansas, many people simply cannot afford adequate health insurance for their families. Our firm's bankruptcy practice regularly sees people forced into bankruptcy due to medical bills. It's a catch 22, they can't afford medical insurance and they can't afford not to have it. They simply roll the dice and hope they won't get sick.

HB 2008: I have very serious concerns about this bill. Frankly, most of my clients cannot afford the court costs, attorney fees, the Parenting in Divorce class, the child support, etc. Court ordered mandatory mediation is simply another expense. Where will it all end? It is getting ridiculous. Many people in this area are "dirt poor". Soon the divorce process will consist of a never ending series of expensive lawyers, counseling sessions, mediators, trustees, etc. This process of adding layer after layer of expense and administration has to stop. Most of my clients are at the financial breaking point and simply cannot afford the extra expense. I'm sure our district judge, Fred Lorentz, would agree as would every other attorney in Wilson County.

Thank you for the opportunity to at least offer my comments on these bills.

HJUS
"Attachment 2"
2/5/91

LAW OFFICES
DAVID P. WOODBURY
EXECUTIVE BUILDING, SUITE 125
4121 WEST 83RD STREET
PRAIRIE VILLAGE, KANSAS 66208-5317

TELEPHONE
AREA CODE 913
642-1144

FAX
AREA CODE 913
642-1175

January 30, 1991

RECEIVED
JAN 31 1991
KANSAS BAR
ASSOCIATION

Mr. Ronald Smith
Legislative Counsel
Kansas Bar Association
1200 Harrison
Topeka, Kansas 66601-1037

Re: Proposed Legislation Relating to Family Law

Dear Ron:

I have enclosed a memorandum regarding family law legislation. Another pressing matter prevented me from completing the memorandum in time to fax it to you by 3:00 p.m. today.

I hope that you will be able to distribute copies of the memorandum to members of the House Judiciary Committee.

Thanks for your help.

Very truly yours,



David P. Woodbury

DPW:spw

Enclosure

HJUD
"Attachment 3"
2/5/91

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MEMORANDUM

TO: House Judiciary Committee
FROM: David P. Woodbury
DATE: January 31, 1991
RE: Proposed Legislation Relating to Family Law

House Bill 2009 - Language Changes Relating to "Residency"
and "Parenting Rights"

House Bill 2008 - Mandating Mediation and Parent Education
in Divorce Cases

House Bill 2006 - Court Trustees; Enforcement of Support

HJUD
2-5-91
attachment #3-2

Introduction

I am impressed with the work done by the Special Committee on Judiciary in drafting House Bills 2009 and 2008. These bills address important issues in Family Law. I also have a brief comment regarding House Bill 2006.

Background

Since I am unable to travel to Topeka to appear before the Judiciary Committee, I appreciate the opportunity to present a written statement to the Committee.

So that you have some perspective on my comments, I have attached a biographical summary of my background as it relates to Family Law and the proposed legislation. Although I am the Chairman of the Family Law Bench Bar Committee of the Johnson County Bar Association, the opinions expressed are my own. As an attorney practicing primarily in the area of Family Law, I appreciate the significant emotional and financial impact of divorce, particularly where minor children are involved.

HJUD
2-5-91
attached 3-3

House Bill 2009

House Bill 2009 addresses the often negative connotations implied by the use of the terms "**custody**" and "**visitation**" in statutes dealing with divorce, paternity actions, child kidnapping, etc. Those words are replaced by "**residency**" and "**parenting**" in Kansas civil and criminal statutes.

House Bill 2009 is a good idea and should be adopted.

Disputes over child custody are influenced by language. Words such as custody and visitation reflect concepts of power, rather than concepts of parenting. Language affects our perception of our responsibilities as parents.

With words of power, the potential conflicts between parents are emphasized — rather than an emphasis upon the allocation of parenting. Parenting is a responsibility rather than a prize awarded by the judge to the winner.

The term "custody" suggests the parent's ownership or physical possession of the child. The term "visitation" suggests that the other parent will be "allowed" (at the discretion or whim of the controlling parent) to "visit" the child. The changes suggested in House Bill 2009 are positive.

I have one caveat regarding House Bill 2009. It is critical to the effectiveness of "joint residency" ("joint custody" under K.S.A. 60-1610) that the statutory change is not seen as a mandate for automatic equal periods of time. The importance of joint custody/residency is that it allows the parents to see themselves as working toward the same goal: good parenting. It is that teamwork concept that helps to reduce conflict.

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House Judiciary Committee
Memorandum Regarding Family Law Legislation
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While equal periods of time in each household work well for some families, it should not be imposed upon every family. The actual period of residency must be tailored to each family.

One further point. My opinions on this issue are based upon my work in helping draft the Johnson County Family Law Bench Bar Guidelines regarding residency. The guidelines are also contained in the pamphlet entitled Children Need Both. Two non-lawyer members of our committee, Gary Kretchmer (Director, Domestic Court Services for the 10th Judicial District) and Carol Roeder-Esser (Coordinator, GRASP Divorce Parent Education Project), have influenced the committee's work in understanding the positive and negative effects of language. My opinions are further based upon my experience in negotiating and litigating many child custody cases over the past decade.

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attachment #
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House Bill 2008

House Bill 2008 addresses the issues of (1) mediation and (2) education for parents about divorce. The proposed legislation is an excellent idea and well drafted. My reservations regarding House Bill 2008 relate only to implementation.

Mediation. Our present statutes in Kansas relating to mediation (e.g. K.S.A. 23-601 et seq.) are excellent. Kansas is seen as a leader in this area. At the international conference of the Association of Family & Conciliation Courts in Canada last year, Chief Justice Robert Miller received an award for Kansas' leadership in the area of family law mediation. I have spoken with attorneys and judges in other states and in Canada who have referred to our mediation statutes in attempting to pass similar legislation in their own states.

In Johnson County, where my law practice is based, our local court rules mandate mediation in child custody cases. The result has been very impressive, with an overall success rate of approximately 70 per cent. The real impact, however, can be seen in the decreased number of contested trials and the fact that more parents have learned how to resolve some of their problems as parents.

As a trained mediator and an affiliate member of the Academy of Family Mediators, my bias should be evident. Nevertheless, my extensive litigation experience in family law cases is more dominant in compelling my conclusion that mediation is a concept whose time has come.

The beneficiaries of the mediation are the children. Research has indicated that the impact of divorce upon children is affected primarily by the level of continuing conflict between the parents and the lack of

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free access between households. See Surviving the Breakup: How Children and Parents Cope With Divorce, by Judith Wallerstein and Joan Kelly.

State-Wide Resources. My only concern about the adoption of House Bill 2008 as it relates to mediation is the critical lack of resources in Kansas. Johnson County has allocated its scarce Court-affiliated resources in providing excellent family services, with mediation and child custody investigations. The Court Service Officers are trained in mediation and well supervised. Many counties, including Johnson County, are short of manpower and will not be receptive to a legislative mandate unmatched by resources.

I have been fortunate to serve as a member of the Kansas Supreme Court Committee on Alternative Dispute Resolution. In its report, the ADR Committee recommended a phase-in period for mandating mediation. I agree with that recommendation. Unless financial resources are added to insure qualified trained personnel, Kansas is not yet ready for mandatory mediation on a state-wide basis.

Judicial Discretion. My second concern regarding the mandatory mediation provision is the lack of judicial discretion, in exceptional cases, for waiving mediation. In some domestic violence or sexual abuse cases, mediation may not be an appropriate remedy. Of course, some protection is needed to limit the waiver to truly exceptional cases.

Parent Education in Child Custody Cases. As provided by local court rule here in Johnson County, divorce education classes are required in all cases involving minor children. Since the program involves a \$10.00 fee, the large number of parents attending generates enough revenue to keep the program going. Further, the attendance of parents early in the

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divorce case (before the custody issue becomes "contested") makes resolution of the custody issue much more likely. If all parents attend the class, the atmosphere in the class is more positive, rather than being dominated by the parents who are convinced of the need for a power struggle.

Our parent education classes in Johnson County are coordinated by Carol Roeder-Esser of Johnson County Mental Health. As noted above, Carol is also a member of our Family Law Bench Bar Committee. In order to understand the effectiveness of parent education classes in child custody cases, I have spoken with Carol and attended one of the classes. I highly recommend the concept. You may reach Carol Roeder-Esser at (913) 831-2550.

I fully endorse the provisions in House Bill 2008 requiring parent education classes in divorce cases. My only caveat is that the language be expanded to require parent education classes in all divorce cases involving minor children, even when there is not a contested issue of child custody.

HJUD
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House Bill 2006

I have some special concerns regarding House Bill 2006, but I assume that those critical concerns have been addressed by Judge Walton and other witnesses before the House Judiciary Committee on Tuesday, January 29, 1991.

HJUD
2-5-91
attachment
3-9

10/90

David P. Woodbury
Executive Building, Suite 125
4121 West 83rd Street
Prairie Village, Kansas 66208-5317
(913) 642-1144

Preparatory education, Georgetown University (1971-73); University of Kansas (B.G.S., 1974); legal education, University of Kansas (J.D., 1977). Fraternity: Pi Sigma Alpha, Beta Theta Pi.

Law Clerk for Hon. David Prager, Kansas Supreme Court, 1977-79.

Member: Johnson County Bar Association (ADR Committee;
Chairman, Family Law Bench Bar Committee)
Kansas City Metropolitan Bar Association (Family Law Committee)
Kansas City Association for Marriage and Family Therapy
(Advisory Council, 1982 - 1988)
Kansas Bar Association (Family Law Section)
Kansas Trial Lawyers Association
Kansas Supreme Court Committee on Alternative Dispute Resolution
American Bar Association (Family Law Section; Litigation Section)
Association of Family and Conciliation Courts
(President, Kansas Chapter 1988-1989)
Academy of Family Mediators, Affiliate

Fellow: American Judicature Society

Board Member: Mental Health Association of Johnson County (1985-1989)
Association of Family & Conciliation Courts (International Board)

Awards: Pro Bono Award (for Public Service) — Kansas Bar Association (1990)

HJD
2-5-91
attest #13-10