

Approved: 3-13-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 6, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Jim Clark, County and District Attorneys Association
David Hanson, Kansas Association Property and Casualty Insurance
Matt Lynch, Judicial Council

Others attending: See attached list

Bill Introduction:

Nancy Lindberg, Assistant to Attorney General, Carla Stovall, presented a legislative proposal concerning consumer protection of the elder and or disabled persons. (Attachment 1) This bill amends K.S.A. 50-636 to enhance civil penalties when elder and/or disabled persons are targeted as victims. Motion made by Senator Harris, second by Senator Feleciano to introduce as a bill. Motion carried.

SB 138--Concerning emergency divorces and contains amendments to K.S.A. 60-1608(a)

Matt Lynch, Judicial Council addressed the Committee as a proponent of **SB 138**, stating that this bill would clarify the 1991 amendment to K.S.A. 60-1608. Under this bill, an emergency divorce could not be heard prior to expiration of the answer time (twenty days), unless otherwise agreed by the parties. (Attachment 2)

Questions and discussion followed with inquiries regarding the need for this bill, and regarding the requirement for notice prior to ex parte hearings concerning the existence of an emergency.

SB 130--Concerning juvenile offender restitution being enforced pursuant to code of civil procedure

Jim Clark, County and District Attorneys Association, presented testimony in support of **SB 130**. Mr. Clark stated that this bill amends the juvenile code to allow a restitution order to be entered as a civil judgment against the juvenile offender. On behalf of the County and District Attorneys Association, Mr. Clark asked for an amendment which raises another policy issue by allowing the restitution order to be granted against the parents or guardian other than the Department of Social and Rehabilitation Services. Mr. Clark explained that as a practical matter, restitution orders on juvenile offender cases do not work due to the limited resources of juvenile offenders, the lack of supervision, and the passage of time makes a restitution order of a significant amount almost impossible under the present system. This bill would allow a private action that would pick up where the public action leaves off. (Attachment 3)

Questions regarding compelling circumstances were asked by Committee members and Mr. Clark responded by stating that compelling circumstances could be define to include people who adopt children with certain circumstances. Regarding compelling circumstances, Mr Clark cited line 16 through line 19 on page 4 of **SB 130** which states the court may order the juvenile offender to perform charitable or social services in lieu of the restitution. In response to further questions, Mr. Clark stated that recovery above \$1,000 are not allowed under current civil laws.

David Hanson, Kansas Association of Property and Casualty Insurance Companies, addressed the Committee as an opponent of **SB 130**. Mr. Hanson stated that when seeking subrogation for an injured family, insurance companies have problems under the existing system. However, according to Mr. Hanson trying to

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.
on February 6, 1995.

make the changes included in this bill may not solve the problem. Mr. Hanson referred to a civil judgment under present law there is a comparison of cost. Mr. Hanson questioned whether under the juvenile system if comparative cost assessments could be made. Mr. Hanson continued that both parties are not being represented, the victim might have some right to amend, but it is not going to be comparison of fault under K.S.A. 60-580a. Mr. Hanson cited potential problems of overlapping enforcement. Mr. Hanson offered an alternative remedy. While liking the idea of restitution, Mr. Hanson suggested keeping the civil judgment separate, thereby making the delineation of responsibility simpler. Insurance companies can get involved in a civil proceeding, but cannot in a juvenile proceeding. Mr. Hanson offered the suggestion of raising the cap or eliminating that cap, then comparative fault could be determined and there would be representation on both sides.

Mr. Clark responded to Mr. Hanson's objections to this bill by stating that juvenile system restitution is already in place, it just doesn't work on behalf of the victim. The purpose of **SB 130** is to follow that juvenile as the juvenile leaves the system. Mr. Clark agreed that overlapping enforcement is a problem, and suggested different language. Mr. Clark offered an option of not adopting the balloon, but taking the cap off of the parent's responsibility in civil procedure. That option would offer extra civil protection for the parents, and there is still opportunity for a subrogator to recover payment. A second option would be to pass the original part leaving the parents out of the juvenile procedure and lifting the cap in the civil procedure.

The Chair determined that there would be further discussion of this bill at a later date.

Senator Bond moved to approve the minutes, second by Senator Reynolds. Motion carried.

Meeting adjourned at 11:05.

The next meeting is scheduled for February 7, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-95

NAME	REPRESENTING
Jim Clare	KC DAA
Paul Shelby	QJA
Matt Lynch	Judicial Council
Robert Dunham	Benedictine College
Angela M. Herman	Benedictine College
Alex Bishop	Benedictine College
John Bezdek	Benedictine College
Spec Committee	
Duane Waterworth	Division of the Budget
Kimberly D. Trevino	BENEDICTINE College
Ann J. Connor	714 Division Pickison Kansas
Gene Johnson	Ks A.S.A.P. Assn
Jeremy Kohn	KSL
David Hanson	Ks Assoc P & C Insur
Jon Newman	Ks Governmental Consulting
Helen Stephens	KPOA / KSA
Scott White	Visitor
Nancy Lindberg	AG

46002



State of Kansas

Office of the Attorney General

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

February 6, 1995

TO: Senate Judiciary Committee
FROM: Attorney General Carla Stovall
RE: Legislative Proposal

Enhance Civil Penalties - Amends K.S.A. 50-636 to enhance civil penalties when elder and/or disabled persons are targeted.

Senate Judiciary Comm
2-6-95
Attachment 1

**Judicial Council Testimony
on
1995 SB 138
Senate Judiciary Committee
February 6, 1995**

SB 138 concerns emergency divorces and contains amendments to K.S.A. 60-1608 (a) recommended by the Family Law Advisory Committee of the Judicial Council.

Under K.S.A. 60-1608, a divorce action cannot be heard until 60 days after the filing of the petition unless the judge determines an emergency exists. Typically, the parties are in agreement as to the desirability of an emergency divorce and have worked out a settlement of the issues in the action. A 1991 amendment to K.S.A. 60-1608 (the stricken language in lines 18 through 22 of the bill) was apparently aimed at the situation in which only one party is seeking an emergency divorce. Prior to the 1991 amendment, the statute did not explicitly address notice to the opposing party.

Judge Solomon, Administrative Judge of the 30th Judicial District, wrote the Judicial Council suggesting clarification of the 1991 amendment to K.S.A. 60-1608. Judge Solomon viewed the 1991 amendment as providing for an ex parte hearing to declare the existence of an emergency followed by notice of a later hearing concerning the granting of the divorce. He suggested the notice should precede the hearing to determine whether an emergency exists. Presumably, if the court determines the existence of an emergency at such hearing, the court could grant the divorce and determine, or defer determination, of other issues in the action.

Under SB 138, an emergency divorce could not be heard prior to expiration of the answer time, unless otherwise agreed by the parties. The advisory committee believed it would be confusing for the summons to indicate a party had 20 days to answer before being held in default and also have a provision which would allow the action to be heard before such time. If at the hearing, the court determines an emergency does exist, the court would have the discretion at that time to grant the divorce and determine other issues in the action or to defer some issues for a later, separate hearing.

*Senate Judiciary Comm
2-6-95
Attachment 2*

OFFICERS

Dennis C. Jones, President
Paul J. Morrison, Vice-President
Nanette L. Kemmerly-Weber, Sec.-Treasurer
John J. Gillett, Past President



DIRECTORS

William E. Kennedy
Julie McKenna
David L. Miller
Jerome A. Gorman

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352

EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL 130

The Kansas County and District Attorneys Association appears in support of SB 130, which makes a restitution order in a juvenile offender case an entry of judgement, allowing a victim of the offense a remedy for damages caused by the offense without the requirement of filing a separate civil action.

The bill is in recognition of the lack of capacity of the juvenile justice system to enforce restitution orders until they have been paid in full. The proliferation of juvenile offender cases has stretched the post-adjudication function of our court system to the limit, and in the case of the restitutorial aspect of supervision, the court loses jurisdiction over the offender before most of them are paid.

The bill allows a private action by the victim where the public rehabilitative effort has failed.

KCDAA would like to offer an amendment to broaden the scope of the bill. On page 4, at lines 10 and 18, we would insert ", the parent(s) or legal guardian other than the Department of Social and Rehabilitation Services". The amendment creates a parental responsibility to the juvenile court, and the victim, for conduct of the child adjudicated as a juvenile offender.

Senate Judiciary Com
2-6-95
Attachment 3

3-2

1 state has been suspended or revoked prior thereto. If any juvenile of-
2 fender shall violate any of the conditions imposed under this subsection,
3 such juvenile offender's driver's license or privilege to operate a motor
4 vehicle on the highways of this state shall be revoked for a period as
5 determined by the court in which such juvenile offender is convicted of
6 violating such conditions.

7 (d) Whenever a juvenile offender is placed pursuant to subsection
8 (a)(1) or (2), the court, unless it finds compelling circumstances which
9 would render a plan of restitution unworkable, shall order the juvenile
10 offender to make restitution to persons who sustained loss by reason of
11 the offense. The restitution shall be made either by payment of an amount
12 fixed by the court or by working for the persons in order to compensate
13 for the loss. *The amount of restitution shall be signed by the sentencing
14 judge as an entry of judgment, pursuant to K.S.A. 60-258 and amend-
15 ments thereto, and enforced pursuant to the code of civil procedure under
16 chapter 60 of the Kansas Statutes Annotated.* If the court finds compelling
17 circumstances which would render a plan of restitution unworkable, the
18 court may order the juvenile offender to perform charitable or social
19 service for organizations performing services for the community.

20 Nothing in this subsection shall be construed to limit a court's authority
21 to order a juvenile offender to make restitution or perform charitable or
22 social service under circumstances other than those specified by this sub-
23 section or when placement is made pursuant to subsection (a)(3) or (4).

24 *A judgment issued hereunder shall continue to be in effect pursuant to
25 K.S.A. 60-2403 and amendments thereto, even if at the time of issuing
26 such judgment the juvenile offender was a minor.*

27 (e) In addition to or in lieu of any other order authorized by this
28 section, the court may order a juvenile offender to pay a fine not exceed-
29 ing \$250 for each offense. In determining whether to impose a fine and
30 the amount to be imposed, the court shall consider the following:

31 (1) Imposition of a fine is most appropriate in cases where the juve-
32 nile offender has derived pecuniary gain from the offense.

33 (2) The amount of the fine should be directly related to the serious-
34 ness of the juvenile offender's offense and the juvenile offender's ability
35 to pay.

36 (3) Payment of a fine may be required in a lump sum or installments.

37 (4) Imposition of a restitution order is preferable to imposition of a
38 fine.

39 (5) The juvenile offender's duty of payment should be limited in du-
40 ration and in no event should the time necessary for payment exceed the
41 maximum term which would be authorized if the offense had been com-
42 mitted by an adult.

43 (f) In addition to or in lieu of any other order authorized by this

the parent(s) or legal guardian other than the Department
of Social and Rehabilitation Services