

Approved: 1/15/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on January 14, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Presta (excused)
Representative Ruff (excused)
Representative Adkins (excused)
Representative Krehbeil (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Randy Hearrell, Kansas Judicial Council
Bud Grant, KCCI

Others attending: See attached list

The Chair called the meeting to order and referred to material concerning committee information and committee operation contained in the members' folders. A member of the staff distributed a list of bills from the 1997 Session. The Chair called on staff for a briefing of HB 2604.

A member of the staff discussed the background and the purpose of HB 2604. The staff member then discussed the purpose of HB 2606. The Chair related that HB 2606 was initiated as a response to an article from Judge Pearson, U.S. Bankruptcy Judge in Wichita. The Chair stated that this bill was a result of the interim committee report and is designed to make lien statutes uniform for personal property.

Bill introductions:

Mr. Bud Grant, KCCI, requested the introduction of a bill concerning making a parent or guardian civilly liable in an amount of the civil penalty for the act of shoplifting by an unemancipated minor. (Attachment 1)

Representative Mays made a motion to introduce Mr. Grant's bill. Representative Howell second the motion. The motion carries.

Mr. Randy Hearrell, Kansas Judicial Council, requested the introduction of two bills. The conferee stated that the first is bill is a recommendation from the Family Law Committee amending K.S.A. 60-1607 and K.S.A. 1996 Supp. 60-1610. The second bill request concerns the Kansas Parentage Act, relating to notice of change in child's residence. (Attachments 2 and 3)

Representative Swenson made a motion, second by Representative Shriver to introduce the two bills requested by Mr. Hearrell. The motion carries.

Committee members discussed possible bill requests.

The Chair adjourned the meeting at 4:00 p.m.

The next meeting is scheduled for January 15, 1998.

House
Judiciary
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Attachment 1

SENATE BILL No. 156

By Committee on Judiciary

1-30

9 AN ACT concerning civil actions; relating to shoplifting; parents or guard-
10 ians of minors; amending K.S.A. 60-3331 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-3331 is hereby amended to read as follows: 60-
15 3331. (a) Except as otherwise provided, a merchant may file a civil action
16 to receive a civil penalty against any adult or emancipated minor who
17 shoplifts from that merchant. If the merchant does not recover the mer-
18 chandise in merchantable condition, the merchant shall be entitled to a
19 civil penalty for an amount equal to twice the retail cost of the merchan-
20 dise, or \$50, whichever is greater, but in no case shall such civil penalty
21 be more than \$500. If the merchant recovers the merchandise in mer-
22 chantable condition, the merchant shall be entitled to a civil penalty of
23 \$50 or 50% of the retail cost of the merchandise, whichever is greater,
24 but in no case shall such civil penalty be more than \$350.

25 (b) *If an unemancipated minor shoplifts, the parent or guardian of*
26 *such minor, shall be civilly liable in an amount of the civil penalty as*
27 *prescribed in subsection (a), except that the provisions of this subsection*
28 *shall not apply in cases where the guardian is a state agency.*

29 (c) ~~(d)~~ Unless the action is brought pursuant to the Kansas small claims
30 act and a final judgment is rendered in small claims court, the prevailing
31 party in such action brought pursuant to this section shall be entitled to
32 reasonable attorney fees and costs. If the action is brought in small claims
33 court and the judgment is appealed to district court pursuant to chapter
34 60 of the Kansas Statutes Annotated or K.S.A. 61-2709 and amendments
35 thereto, the prevailing party on appeal shall be entitled to reasonable
36 attorney fees and costs.

37 ~~(e)(f)~~ (e) conviction or a plea of guilty to the offense of theft of the
38 merchandise is not a prerequisite to the filing of a civil action under this
39 section.

40 ~~(d)(e)~~ (f) Prior to filing a civil action under this section, a merchant dam-
aged by shoplifting may demand that an individual alleged to be civilly
43 liable under this act reimburse such merchant in an amount of the civil
penalty as prescribed in subsection (a). Such demand, if made, shall be

(c) Any claim of a merchant arising under Section 1, subsection (a) and (b), may be assigned.

1 in writing and may be offered in consideration for the merchant's agree-
2 ment not to commence a civil action under this section. Such demand
3 shall not contain a threat of criminal prosecution against such individual.
4 Any merchant who makes a demand with a threat of criminal prosecution
5 against such individual shall be precluded from filing a civil action under
6 this section and pursuing any other remedy at law or equity. A demand
7 pursuant to this subsection is not a prerequisite to filing a civil action
8 under this section, but no demand may be made which does not comply
9 with this subsection.

10 ~~(e)(f)~~ (g) Nothing contained in this act shall be construed to preclude a
11 merchant from pursuing any other remedy at law or equity prior to filing
12 an action under this act.

13 ~~(f)(g)~~ (h) For purposes of this act, "shoplift" means any one or more of
14 the following acts committed by a person without the consent of the
15 merchant and with the intent of appropriating merchandise to that per-
16 son's or another's own use without payment; obtaining merchandise at
17 less than its stated sales price or otherwise depriving a merchant of all or
18 any part of the value or use of merchandise:

19 (1) Removing any merchandise from the premises of the merchant's
20 establishment;

21 (2) concealing any merchandise with intent to leave the premises with
22 the merchandise;

23 (3) substituting, altering, removing or disfiguring any label or price
24 tag;

25 (4) transferring any merchandise from a container in which that mer-
26 chandise is displayed or packaged to any other container; or

27 (5) disarming any alarm tag attached to any merchandise.

28 Sec. 2. K.S.A. 60-3331 is hereby repealed.

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

#2

HB BILL No. ___

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AN ACT concerning child custody; amending K.S.A. 60-1607 and K.S.A. 1996 Supp. 60-1610 and repealing the existing sections.

Section 1. K.S.A. 60-1607 is hereby amended to read as follows: 60-1607. (a) Permissible orders. After a petition for divorce, annulment or separate maintenance has been filed, ~~and during the pendency of the action prior to final judgment~~ the judge assigned to hear the action may, without requiring bond, make and enforce by attachment, orders which:

- (1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;
- (2) restrain the parties from molesting or interfering with the privacy or rights of each other;
- (3) provide for the custody of the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;
- (4) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case; or
- (5) require an investigation by court service officers into any issue arising in the action.

(b) Ex parte orders. Orders authorized by subsections (a)(1), (2) and (3) may be entered after ex parte hearing upon compliance with rules of the supreme court, but no ex parte order shall have the effect of changing the custody of a minor child from the parent who has had the sole de facto custody of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within ~~40~~ 15 days of the date that a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the

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Attachment 2

1 action, any other judge of the district court may make any order authorized by this section, including
2 vacation or modification or any order issued by the judge assigned to hear the action.

3 (c) Support orders. (1) An order of support obtained pursuant to this section may be enforced by an
4 order of garnishment as provided in this section.

5 (2) No order of garnishment shall be issued under this section unless: (A) Ten or more days have
6 elapsed since the order of support was served upon the party required to pay the support, and (B) the
7 order of support contained a notice that the order of support may be enforced by garnishment and
8 that the party has a right to request an opportunity for a hearing to contest the issuance of an order
9 of garnishment, if the hearing is requested by motion filed within five days after service of the order
10 of support upon the party. If a hearing is requested, the court shall hold the hearing within five days
11 after the motion requesting the hearing is filed with the court or at a later date agreed to by the
12 parties.

13 (3) No bond shall be required for the issuance of an order of garnishment pursuant to this section.
14 Except as provided in this section, garnishments authorized by this section shall be subject to the
15 procedures and limitations applicable to other orders of garnishment authorized by law.

16 (4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of
17 the district court stating that:

18 (A) The order of support contained the notice required by this subsection;

19 (B) ten or more days have elapsed since the order of support was served upon the party required to
20 pay the support; and

21 (C) either no hearing was requested on the issuance of an order of garnishment within the five days
22 after service of the order of support upon the party required to pay the same or a hearing was

1 requested and held and the court did not prohibit the issuance of an order of garnishment.

2 (d) Service of process. Service of process served under subsection (a)(1) and (2) shall be by personal
3 service and not by certified mail return receipt requested.

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5 Section 2. K.S.A. 1996 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree
6 in an action under this article may include orders on the following matters:

7 (a) Minor children. (1) Child support and education. The court shall make provisions for the
8 support and education of the minor children. The court may modify or change any prior order when
9 a material change in circumstances is shown, irrespective of the present domicile of the child or the
10 parents. The court may make a modification of child support retroactive to a date at least one month
11 after the date that the motion to modify was filed with the court. Any increase in support ordered
12 effective prior to the date the court's judgment is filed shall not become a lien on real property
13 pursuant to K.S.A. 60-2202 and amendments thereto. Regardless of the type of custodial
14 arrangement ordered by the court, the court may order the child support and education expenses to
15 be paid by either or both parents for any child less than 18 years of age, at which age the support
16 shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court,
17 to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of
18 age before completing the child's high school education in which case the support shall not terminate
19 automatically, unless otherwise ordered by the court, until June 30 of the school year during which
20 the child became 18 years of age if the child is still attending high school; or (C) the child is still a
21 bona fide high school student after June 30 of the school year during which the child became 18
22 years of age, in which case the court, on motion, may order support to continue through the school

1 year during which the child becomes 19 years of age so long as the child is a bona fide high school
2 student and the parents jointly participated or knowingly acquiesced in the decision which delayed
3 the child's completion of high school. The court, in extending support pursuant to subsection
4 (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the
5 guideline table category for 16-year through 18-year old children. Provision for payment of support
6 and educational expenses of a child after reaching 18 years of age if still attending high school shall
7 apply to any child subject to the jurisdiction of the court, including those whose support was ordered
8 prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for
9 termination of support before the date provided by subsection (a)(1)(B), the court may review and
10 modify such agreement, and any order based on such agreement, to extend the date for termination
11 of support to the date provided by subsection (a)(1)(B). If an agreement approved by the court prior
12 to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C),
13 the court may review and modify such agreement, and any order based on such agreement, to extend
14 the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this
15 section, "bona fide high school student" means a student who is enrolled in full accordance with the
16 policy of the accredited high school in which the student is pursuing a high school diploma or a
17 graduate equivalency diploma (GED). In determining the amount to be paid for child support, the
18 court shall consider all relevant factors, without regard to marital misconduct, including the financial
19 resources and needs of both parents, the financial resources and needs of the child and the physical
20 and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart
21 any portion of property of either the husband or wife, or both, that seems necessary and proper for
22 the support of the child. Every order requiring payment of child support under this section shall

1 require that the support be paid through the clerk of the district court or the court trustee except for
2 good cause shown.

3 (2) Child custody and residency. (A) Changes in custody. Subject to the provisions of the uniform
4 child custody jurisdiction act (K.S.A. 38-1301 et seq., and amendments thereto), the court may
5 change or modify any prior order of custody when a material change of circumstances is shown;

6 ~~but no ex parte order shall have the effect of changing the custody of a minor child from the parent
7 who has had the sole de facto custody of the child to the other parent unless there is sworn testimony
8 to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the
9 court shall hear a motion to vacate or modify the order within 15 days of the date that a party
10 requests a hearing whether to vacate or modify the order.~~

11 (B) Examination of parties. The court may order physical or mental examinations of the parties if
12 requested pursuant to K.S.A. 60-235 and amendments thereto.

13 (3) Child custody or residency criteria. The court shall determine custody or residency of a child in
14 accordance with the best interests of the child.

15 (A) If the parties have a written agreement concerning the custody or residency of their minor child,
16 it is presumed that the agreement is in the best interests of the child. This presumption may be
17 overcome and the court may make a different order if the court makes specific findings of fact
18 stating why the agreement is not in the best interests of the child.

19 (B) In determining the issue of custody or residency of a child, the court shall consider all relevant
20 factors, including but not limited to:

21 (i) The length of time that the child has been under the actual care and control of any person other
22 than a parent and the circumstances relating thereto;

- 1 (ii) the desires of the child's parents as to custody or residency;
- 2 (iii) the desires of the child as to the child's custody or residency;
- 3 (iv) the interaction and interrelationship of the child with parents, siblings and any other person who
- 4 may significantly affect the child's best interests;
- 5 (v) the child's adjustment to the child's home, school and community;
- 6 (vi) the willingness and ability of each parent to respect and appreciate the bond between the child
- 7 and the other parent and to allow for a continuing relationship between the child and the other parent;
- 8 and
- 9 (vii) evidence of spousal abuse.

10 Neither parent shall be considered to have a vested interest in the custody or residency of any child

11 as against the other parent, regardless of the age of the child, and there shall be no presumption that

12 it is in the best interests of any infant or young child to give custody or residency to the mother.

13 (4) Types of custodial arrangements. Subject to the provisions of this article, the court may make

14 any order relating to custodial arrangements which is in the best interests of the child. The order

15 shall include, but not be limited to, one of the following, in the order of preference:

16 (A) Joint custody. The court may place the custody of a child with both parties on a shared or

17 joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best

18 interests of the child under their custody. When a child is placed in the joint custody of the child's

19 parents, the court may further determine that the residency of the child shall be divided either in an

20 equal manner with regard to time of residency or on the basis of a primary residency arrangement

21 for the child. The court, in its discretion, may require the parents to submit a plan for implementation

22 of a joint custody order upon finding that both parents are suitable parents or the parents, acting

1 individually or in concert, may submit a custody implementation plan to the court prior to issuance
2 of a custody decree. If the court does not order joint custody, it shall include in the record the
3 specific findings of fact upon which the order for custody other than joint custody is based.

4 (B) Sole custody. The court may place the custody of a child with one parent, and the other parent
5 shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the
6 best interests of the child, subject to the visitation rights of the noncustodial parent.

7 (C) Divided custody. In an exceptional case, the court may divide the custody of two or more
8 children between the parties.

9 (D) Nonparental custody. If during the proceedings the court determines that there is probable cause
10 to believe that: (i) The child is a child in need of care as defined by subsections (a)(1), (2) or (3) of
11 K.S.A. 38-1502 and amendments thereto; (ii) neither parent is fit to have custody; or (iii) the child
12 is currently residing with such child's grandparent, grandparents, aunt or uncle and such relative has
13 had actual physical custody of such child for a significant length of time, the court may award
14 temporary custody of the child to such relative, another person or agency if the court finds the award
15 of custody to such relative, another person or agency is in the best interests of the child. In making
16 such a custody order, the court shall give preference, to the extent that the court finds it is in the best
17 interests of the child, first to awarding such custody to a relative of the child by blood, marriage or
18 adoption and second to awarding such custody to another person with whom the child has close
19 emotional ties. The court may make temporary orders for care, support, education and visitation that
20 it considers appropriate. Temporary custody orders are to be entered in lieu of temporary orders
21 provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect
22 until there is a final determination under the Kansas code for care of children. An award of

1 temporary custody under this paragraph shall not terminate parental rights nor give the court the
2 authority to consent to the adoption of the child. When the court enters orders awarding temporary
3 custody of the child to an agency or a person other than the parent but not a relative as described in
4 subpart (iii), the court shall refer a transcript of the proceedings to the county or district attorney.
5 The county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments
6 thereto and may request termination of parental rights pursuant to K.S.A. 38-1581 and amendments
7 thereto. The costs of the proceedings shall be paid from the general fund of the county. When a
8 final determination is made that the child is not a child in need of care, the county or district attorney
9 shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders
10 pursuant to this section. If the same judge presides over both proceedings, the notice is not required.
11 Any disposition pursuant to the Kansas code for care of children shall be binding and shall supersede
12 any order under this section. When the court enters orders awarding temporary custody of the child
13 to a relative as described in subpart (iii), the court shall annually review the temporary custody to
14 evaluate whether such custody is still in the best interests of the child. If the court finds such custody
15 is in the best interests of the child, such custody shall continue. If the court finds such custody is not
16 in the best interests of the child, the court shall determine the custody pursuant to this section.

17 (b) Financial matters. (1) Division of property. The decree shall divide the real and personal
18 property of the parties, whether owned by either spouse prior to marriage, acquired by either spouse
19 in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) a division
20 of the property in kind; (B) awarding the property or part of the property to one of the spouses and
21 requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under
22 conditions prescribed by the court, and dividing the proceeds of the sale.

1 In making the division of property the court shall consider the age of the parties; the duration of the
2 marriage; the property owned by the parties; their present and future earning capacities; the time,
3 source and manner of acquisition of property; family ties and obligations; the allowance of
4 maintenance or lack thereof; dissipation of assets; and such other factors as the court considers
5 necessary to make a just and reasonable division of property.

6 (2) Maintenance. The decree may award to either party an allowance for future support denominated
7 as maintenance, in an amount the court finds to be fair, just and equitable under all of the
8 circumstances. The decree may make the future payments modifiable or terminable under
9 circumstances prescribed in the decree. The court may make a modification of maintenance
10 retroactive to a date at least one month after the date that the motion to modify was filed with the
11 court. In any event, the court may not award maintenance for a period of time in excess of 121
12 months. If the original court decree reserves the power of the court to hear subsequent motions for
13 reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period
14 of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient
15 of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may
16 reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or
17 terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period
18 of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of
19 maintenance prior to the expiration of subsequent periods of time for maintenance payments to be
20 made, but no single period of reinstatement ordered by the court may exceed 121 months.
21 Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any
22 other basis. At any time, on a hearing with reasonable notice to the party affected, the court may

1 modify the amounts or other conditions for the payment of any portion of the maintenance originally
2 awarded that has not already become due, but no modification shall be made without the consent of
3 the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for
4 the unpaid maintenance beyond what was prescribed in the original decree. Every order requiring
5 payment of maintenance under this section shall require that the maintenance be paid through the
6 clerk of the district court or the court trustee except for good cause shown.

7 (3) Separation agreement. If the parties have entered into a separation agreement which the court
8 finds to be valid, just and equitable, the agreement shall be incorporated in the decree. The
9 provisions of the agreement on all matters settled by it shall be confirmed in the decree except that
10 any provisions for the custody, support or education of the minor children shall be subject to the
11 control of the court in accordance with all other provisions of this article. Matters settled by an
12 agreement incorporated in the decree, other than matters pertaining to the custody, support or
13 education of the minor children, shall not be subject to subsequent modification by the court except:

14 (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

15 (4) Costs and fees. Costs and attorney fees may be awarded to either party as justice and equity
16 require. The court may order that the amount be paid directly to the attorney, who may enforce the
17 order in the attorney's name in the same case.

18 (c) Miscellaneous matters. (1) Restoration of name. Upon the request of a spouse, the court shall
19 order the restoration of that spouse's maiden or former name.

20 (2) Effective date as to remarriage. Any marriage contracted by a party, within or outside this state,
21 with any other person before a judgment of divorce becomes final shall be voidable until the decree
22 of divorce becomes final. An agreement which waives the right of appeal from the granting of the

1 divorce and which is incorporated into the decree or signed by the parties and filed in the case shall
2 be effective to shorten the period of time during which the remarriage is voidable.

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4

HB BILL No. ___

AN ACT concerning the Kansas parentage act, relating to notice of change in child's residence.

1 Section 1. (a) Except as provided in subsection (d), a parent entitled to the custody of a child
2 pursuant to K.S.A. 1996 Supp. 38-1121 and amendments thereto shall give written notice to the
3 other parent who has been granted custodial or visitation rights pursuant to K.S.A. 1996 Supp. 38-
4 1121(d) and amendments thereto not less than 21 days prior to changing the residence of the child
5 to a place outside this state or removing the child from this state for a period of time exceeding 90
6 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address
7 of the other parent.

8 (b) Failure to give notice as required by subsection (a) is an indirect civil contempt
9 punishable as provided by law. In addition, the court may assess, against the parent required to give
10 notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the
11 failure to give notice.

12 (c) A change of the residence of a child to another state or removal of a child from this state
13 for a period of time exceeding 90 days may be considered a material change of circumstances which
14 justifies modification of a prior order of child support or custody.

15 (d) A parent entitled to custody of a child pursuant to K.S.A. 1996 Supp. 38-1121 and
16 amendments thereto shall not be required to give the notice required by this section to the other
17 parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of
18 chapter 21 of the Kansas Statutes Annotated in which the child is the victim of such crime.

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Attachment 3