

Approved: Feb. 11, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on February 10, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Craig Grant, Kansas National Education Association
Sara Magnuson, Teacher, Lawrence, Kansas
Rachel Kmiek, Winfield, Kansas
Kathy Stuckey, Teacher, Newton, Kansas
Kari Ramos, Kansas advocacy & Protective Services
Sue McKenna, Social Rehabilitation Service (SRS)
Mark Tallman, Kansas Association of School Boards

Others attending: See attached list

The minutes of the February 9 meeting were approved on a motion by Sen. Feleciano and a second by Sen. Oleen. Motion carried.

SB 571 - School safety and security, disclosure of information relating to student with a history of dangerous behavior

Conferee Grant testified as a proponent of **SB 571**. He discussed KNEA's request for a policy change in legislation which would require administrators "who come into possession of information about a student with a history of dangerous behavior" to "inform educators of the identity and dangerous propensities of such a student." This, he stated, would provide the "safest possible environment for students and employees in the schools of our state." He noted that violations of this act would constitute a class B nonperson misdemeanor and discussed other legal ramifications of the bill. Discussion followed and, in response to Committee members inquiries, Conferee Grant clarified portions of the bill's language and intent. (attachment 1)

Conferee Magnuson, testifying in favor of **SB 571**, expressed concern about the safety of students, herself and fellow teachers as she related specific examples of acts of violence by some students in her school who were either transfer students with a history of violent behavior or students within the community. She stated she felt this bill would help to assure the physical safety of students. (attachment 2)

Conferee Kmiek testified in favor of **SB 571**. She provided a detailed historical account of the criminal activity of a student in her community whose record of behavior was not made available to the school administration nor the staff. This student, she testified, murdered her brother in 1987. She strongly urged passage of this bill. (no attachment)

Conferee Stuckey testified in favor of **SB 571**. She detailed her personal experience with a student who threatened "to rape me and slash my throat". This, she stated, occurred while she was serving as detention officer at her school. She recounted the psychological and emotional suffering she has endured since this happened. She related the student's past behavior and stated that no information had been given to her or her colleagues regarding this. She strongly urged passage of the bill. (no attachment)

Conferee Ramos opposed **SB 571**. She stated that she felt safety concerns for students and faculties of schools were laudable but she expressed concern regarding the ramifications **SB 571**, a bill which she stated "won't solve the problem". She stated that the problem "goes deeper than reporting and knowing". She expressed concern for the perpetrator and his need for rehabilitation and stated that often violent acts are done by people who don't normally "carry" aggressive behavior. She requested Committee study this in depth before making any decisions. (no attachment)

Conferee McKenna testified on behalf of Secretary Chronister in support of **SB 571**. She offered language changes to clarify portions of the bill. (attachment 3)

Conferee Tallman testified in opposition to **SB 571** in its current form. He discussed the legal ramifications of the bill and the potential for liability against school boards and their members. He also discussed concerns about certain language and content in the bill. (attachment 4) Brief discussion followed.

SB 408 - Providing expedited process to review and determine validity of certain liens

At the request of the Chair, Senator Schraad reviewed his subcommittee's review of **SB 408** and stated the subcommittee recommended Committee proceed with the bill as it is. (attachment 5) Following brief discussion, staff was directed to "clean up" some language in the bill.

Meeting adjourned at 11:01 a.m. The next scheduled meeting is Wednesday, February 11.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 10, 1998

NAME	REPRESENTING
<i>Matthew Kennedy</i>	<i>Leadership Action Co.</i>
<i>Cindy Ladd</i>	"
<i>Dennis Beaver</i>	" "
<i>CHRIS WAGNER</i>	" "
<i>Amy Fresh</i>	" "
<i>Victor Lynn Hessel</i>	<i>Budget</i>
<i>Roberta Sue McKenna</i>	<i>SRS</i>
<i>William Spereber</i>	<i>KEM</i>
<i>Marvin John</i>	<i>KEM</i>
<i>Greg Brownfield</i>	<i>KNEA</i>
<i>Rachel Knies</i>	<i>self (on behalf of KNEA)</i>
<i>Kathleen Stucky</i>	<i>KNEA</i>
<i>Sarah Magnusson</i>	<i>for KNEA (LEA)</i>
<i>Natalie Reder</i>	<i>Federico Consulting</i>
<i>Larrie Ann Brown</i>	<i>KS. Govt Consulting</i>
<i>Kathy Sheppard</i>	<i>USD 402 - Augusta</i>
<i>Cowan Stephens</i>	<i>Augusta USD 402</i>
<i>Conalyn Schmidt</i>	<i>Neenata - KNEA</i>
<i>Craig Kahn</i>	<i>KANSAS COUNCIL ON DD</i>

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February - 10, 1998

NAME	REPRESENTING
Jesse F. Greenly	Leadership Atchison
Tom D. Sac	" "
Laura Moccia	" "
Marta Myers	" "
Karl Ramon	KAPS
Laura L. Young	Leadership Atchison
Mark Callman	KASIB
Rosilyn James-Markin	SRS - Children & Family Services
Lowell Wendland (visitor)	Ks 7th Interfaith Impact
James A. Strasen	K5 Interfaith Impact
Jillene de	Future for Jim. Lynn
Lyle Sylvester	Wamego K11
Dean Schowengerdt	" "
Leroy Stewart	Wamego K1 - (KEM)
L.M. Magnuson	Parent
Kathy Porter	OJA
Jacques Oakes	SQE
Blene M. Strabell	KTLA
Craig Grant	KWEA
Patricia Cameron	Kansas Interfaith Impact

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 10 1998

NAME	REPRESENTING
JOHN ROEPKE	KASB



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KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before
Senate Judiciary Committee
Tuesday, February 10, 1998

Thank you Mr. Chairman. I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit with the Senate Judiciary Committee in favor of Senate Bill 571. The committee introduced this bill at our request and we appreciate that action.

The main policy change in SB 571 is found on page two, lines 19-40. What we are asking for in this bill is that administrators who come into possession of information about a student with a history of dangerous behavior would be required to inform educators of the identity and dangerous propensities of such a student. Such a student is defined on page one of the bill and is very specific as to what "history" we mean. Such a student would be one who had been expelled basically for an action which had endangered the safety of others or had been adjudged to be a juvenile offender (or been tried and convicted as an adult) for a crime which would involve direct threat to human life. We change several different statutes in the bill to reflect this same policy change, and also indicate in a couple of places (pages 14, 16, and 17) that such records can be given to the proper educators.

We ask for this change for one basic reason--so we can provide the safest possible environment for students and employees in the schools of our state. We believe that educators have a legitimate need for this information so they can adjust lessons and approaches to students who have a history of dangerous behavior. Information given could very well help an educator diffuse tense situations; could help an educator know when to call for outside assistance from other teachers or administrators; and could help educators recognize possible early signals from a student who may be ready to "come unglued."

Violations of this act would be a class B nonperson misdemeanor. We have also clarified and strengthened the school safety and security act in SB 571 by stating that school employees shall not be subject to the penalties for not reporting incidents, if they follow the procedures of their board policy or if their board has failed to adopt such a policy. (Actually we believe there is a technical error that needs to be corrected--we want to make sure that administrators must

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follow the disclosure and the reporting portion of the bill. However, we want school employees to not have misdemeanor liability only in regard to reporting to law enforcement authorities if they are following their board procedures or if the board has failed to adopt such a policy.) We do believe that we have found that some boards in this state have not yet adopted report policies and teachers should not be liable under an act if they are trying to follow guidelines within this act.

Some individuals may mention the federal law called the Family Educational Rights and Privacy Act (FERPA). FERPA is a complex federal law that protects the privacy interests of parents and students with regard to education records. FERPA restricts the release of school records without the consent of the student's parents. SB 571, however, does not violate FERPA.

The regulations for FERPA clearly state that information about disciplinary action may be disclosed to school officials, including teachers, who have legitimate educational interests in the behavior of the student. This is true especially when the information concerns disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. (See § 99.36 of the FERPA regulations.) That is why we made the definition of "history of dangerous behavior" narrow in scope. These students (having been expelled or convicted for acts that involve threat to human life) certainly pose a safety situation which the teacher has a legitimate interest in if they are to maintain a safe environment for students and employees.

We are serious about this change because we are serious about our responsibility to have safe environments in our schools. We believe we could better do our job if we had the information requested in this bill. You will hear from educators after me who have stories and information which, hopefully, reinforce our support for this bill. Unfortunately this will not guarantee that we will have no more violence in our schools -- we wish it did. But we believe that passage of SB 571 would help toward that goal.

We would ask that you report SB 571 favorably for passage. Thank you for listening to the concerns of our members.

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Sarah Magnuson Testimony Before Senate Judiciary Committee
Tuesday, February 10, 1998

I am Sarah Magnuson. I teach at Central Junior High School in Lawrence, Kansas and also am a patron of that school. Five of my children have attended CJHS, one is there now, and we have one more who will be going there in another two-and-a-half years. I have taught at Central for the last 25 years and have served on the discipline committee for six years, four of them as chairperson. Obviously, I have a vested interest in helping Central remain an excellent school, and in seeing to it that all young adults are safe there.

In addition to the safety of students, I am also concerned with the safety of myself and my fellow teachers. We have received transfer students either from within the district or from other districts who have committed acts of violence against students and teachers shortly after they arrived. Some of these acts of violence might have been avoided if teachers involved had been aware that the potential for such violence existed. Some specific examples that have happened recently:

A girl came to Central from another school within the district. She was fighting verbally with another student in the halls when a teacher told both to break it up and be on their way. Student A tried to do that, and the transfer student took out after her, grabbed her clothing and swung at her with keys in her hand. Yet another teacher tried to intervene and had her finger injured severely enough that she had to seek medical attention and have it in a splint to heal. Had the first teacher known of potential problems he would have asked the violent student to step into his room, escorted her to her next class, or walked with her to the office.

Another student who transferred in from another district shoved a teacher in the chest when the student was asked to follow routine classroom procedure.

A student from within our own attendance area threatened a staff member with a broken bottle in the parking lot.

Another neighborhood student attempted to strangle a student in the main office. Student A had run into the office to escape the violent student where the latter had grabbed him around the neck and pinned him against the wall with his feet off the ground. A male teacher in the next room trained in Taw Kwon Do rushed in to get him off Student A. The violent student then jumped a waist-high

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counter and eventually had to be subdued by two police officers who happened to be in the building giving a talk. On the way out, this student, with police on either side of him, kicked in a window pane of an entry door. This student had a record of violent acts within the community.

Yet another student with a history of violence in the community shoved a first year teacher for no apparent reason as the student was entering his classroom.

In my own classroom a small seventh-grade student suddenly got angry, picked up a desk with seat attached and threw it at another student. I had no clue before then that this student might be violent.

These are only a few examples of physically harmful actions done by violent students. And please do not think Central has an unusual number of violent acts; other schools have them, too, some even serious enough to be reported in the local paper; many of them reported by word of mouth among parents.

Would knowing that these students had a history of violence have helped us prevent the violence? In some cases the answer would definitely be "yes" for that particular event; in other cases we did know by word of mouth, but were unable to prevent damage because the acts were too unpredictable, the strength and determination of the angry student was too great, or because no workable plan was in place.

Who would be responsible for notifying schools, and whom would they notify? The cases cited above, of example, represent a need to know from community corrections, from feeder schools, from same-level schools within the district, from other districts, and from counselors/therapists working with students as clients. Of course, parents would know their child's history and medical/psychological problems; would it be their responsibility to be sure school personnel know? Any every adult working in a school would need to know--we all monitor halls, rest rooms, cafeterias and school grounds. We are all responsible for all students all during the school day. No longer can we say "He/she isn't "my" student". I hope you pass this notification bill, and that you realize that such a measure is only the beginning of dealing with this problem of violence in our schools. As long as we *require* students by law to attend school, the very least we can do is assure their physical safety.

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

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<p>Senate Judiciary Tuesday, February 10, 1998</p>
<p>Testimony: Senate Bill 571</p>
<p>Children and Family Services Teresa Markowitz, Commissioner (785) 368-6448</p>

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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Senate Judiciary
Senate Bill No. 571

February 10, 1998

Mr. Chair and Members of the committee, I am Roberta Sue McKenna, Youth Services Attorney for the Kansas Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning due process for children in need of care as addressed in Senate Bill 571.

The Secretary supports the concept of fully sharing information with those providing services to children and youth. Certainly schools and their staff must have the information necessary to provide a safe learning environment. However, as currently written this bill could be interpreted to limit the sharing of information for any purpose other than safety. We believe the language should be clarified to insure the authority to appropriately share information necessary for schools to educate students.

This could be accomplished by adding at page 9, line 35 the words "or educate" following "protect" and on the following page adding to lines 26 and 28 the phrase "and to meet the educational needs of the child."



TO: Senate Committee on Judiciary
FROM: Mark Tallman, Director of Governmental Relations
DATE: February 10, 1998

RE: Testimony on S.B.571 - Amendments the School Safety Act

Mr. Chairman, Members of the Committee:

We appreciate the opportunity to appear before you today on S.B. 571. Our association opposes the bill in the current form. We believe it could open school boards and school board members up to additional legal liability. If you choose to recommend this bill, we ask that you amend the bill to provide protection to boards. We also urge you to carefully consider whether this bill will really advance the cause of safe schools or protect the interests of educators or children.

Our major concerns about this bill are the provisions that require administrators to "inform educators" about "students with a history of dangerous behavior." This sounds quite benign, and the bill does provide a fairly objective definition of what constitutes such a student. However, there are a number of possible problems with the language of the bill.

First, it requires that any administrator who comes into possession of information about a student with a history of dangerous behavior to "educators," defined as any teacher or other professional or paraprofessional who has "exposure" to any such student at either a school or school-sponsored activity. The administrator's obligation to inform is not limited to teachers in his or her building, or even school district. Presumably, if a superintendent or other administrator receives any information about a student who meets the definition in the bill, he or she must "inform" every teacher or paraprofessional in the state of Kansas who might possibly be "exposed" - or whose students might be exposed - to the student.

The bill does not define "exposed." Certainly, every teacher in a building where such students attend, and every student, is "exposed." Consider extracurricular activities. If a student who meets these criteria attends an event at any other school, such as a football game, track meet or band competition, any administrator who knows about that student's record would be legally obligated to inform any and all teachers of any student from any school that might possibly come into contact with that student.

The bill also does not define "inform." Is word of mouth adequate? Does the information have to be shared in writing? If an administrator tries to inform a teacher who happens to be absent, or somehow misses the information, is the administrator liable? And what information is the administrator required to provide? The bill says "the identity and dangerous

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propensities” of such students, but does not define “dangerous propensities.” An administrator may know that a student “has a record,” but have no idea whether or not the student continues to be a threat. What exactly is the administrator supposed to tell the teacher?

Frankly, this bill would criminalize what is often a judgment call. For that reason, we believe the possibility of increased litigation over what administrators should know, do or say is inevitable under this bill. The cost of defending administrators for “judgment calls” will be borne by the school district, at the expense of educational programs, including teachers salaries. At a minimum, we ask that this bill be amended to make clear that school boards or board members are not liable for the failure of administrators to take the steps required in this bill.

We would also call your attention to page 17 of the bill, the amendments on lines 25-29, which provides that juvenile offender information may be inspected by “any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator’s students.” Who decides what “extent” is “necessary?” Every exception to confidentiality in current law simply states who is entitled to this information. Only this amendment would require a “subjective” judgment.

Finally, we are concerned that some information required to be shared under this bill may violate federal student privacy rights under the Family Educational Rights and Privacy Act (the “Buckley” amendment). Our legal staff believes that this bill goes well beyond what Buckley allows.

We frankly question the idea that school administrators have so little regard for the safety of teachers and students that they suppress information about dangerous students. Of course, mistakes are sometimes made, and sometimes have tragic consequences. When teacher make mistakes - or worse - they are entitled to full due process protections. Under this bill, administrators mistakes would become a crime. Students, whose past conduct would become virtually public knowledge, would have no due process to protect their names and reputations.

Thank you for your consideration.

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Subcommittee Report
SB 408

Your subcommittee on SB 408 met to discuss possible changes to the bill.

The main issue we discussed dealt with adding criminal or civil penalties to the bill, and reviewed the penalty language suggested by the Attorney General's office to the interim Judiciary committee.

Staff pointed out that the way the bill was written, that there would be due process problems involved in adding penalties to this bill.

The subcommittee felt that SB408 did speak to the primary concern of correcting erroneous liens, and that if civil/criminal penalties were needed that they might be best handled through separate legislation.

Respectfully submitted,

Senator Keith Schraad
Senator Greta Goodwin
Senator Les Donovan

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