

Approved: Feb 23 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 19, 1998 in Room 514S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Dave Debenham, Deputy Attorney General
Criminal Division

Others attending: See attached list

Senator Bond moved to approve the minutes of the February 16 meeting, Senator Goodwin seconded. Motion carried.

SB 588--Discovery of testimony of expert witness

Conferee Debenham testified in support of **SB 588** stating that this bill "would amend the language of K.S.A. 22-3212 and add a new provision which would specifically provide for reciprocal discovery of expert witnesses in a criminal matter". He reviewed the basis for the bill amendment and detailed two new provisions in the bill. (attachment 1) Discussion followed. Jim Clark, Kansas County and District Attorneys Association, at the pleasure of the Chair, publicly declared his organization's support of **SB 588**. Senator Bond moved to pass the bill out favorably, Senator Goodwin seconded. Following discussion, motion carried 10-1 with Senator Pugh voting nay.

Senator Schraad briefly reviewed each of the following Senate bills his subcommittee (SC) discussed and gave the SC's recommendation for each (all were recommended favorably):

SB 517 - An act concerning jurors; relating to juror questionnaires Following discussion Senator Goodwin moved to pass the bill out favorably, Senator Schraad seconded. Carried.

SB 636 - No new birth certificate issued in adoption case when in the best interests of the child to retain the old birth certificate Following discussion, Senator Bond moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

SB 579 - Juror qualifications relating to English language proficiency Following discussion regarding bill mergers, Senator Oleen moved to reconsider action on SB 517, Senator Bond seconded. Carried. Senator Oleen moved to amend SB 579 into SB 517 and pass the bill out favorably as amended, Senator Bond seconded. Carried.

SB 552 - Availability of presentence reports Following brief discussion on this bill, Senator Schraad moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

SB 298 - State Board of Education prohibited from issuing certificate to certain persons Following discussion on the subject matter, the technical error in the balloon amendment and provision requirements, Senator Petty moved to pass the bill, Senator Oleen seconded. Upon further discussion, Senator Oleen requested time to consider the bill. Motion and second withdrawn. Bill will be revisited later. (attachment 2)

Senator Pugh briefly reviewed each of the Senate bills his subcommittee (SC) discussed and gave the SCs recommendation for each:

SB 607 - An act concerning crimes and punishment; relating to criminal use of weapons; certain explosive material. Following discussion of this bill the SC recommended favorably for passage, Senator Pugh moved the bill be passed and placed on the consent calendar, Senator Harrington seconded. Carried.

SB 654 - Investigation of suspected felony act committed at juvenile correctional facilities. The SC recommended retaining the bill for further study.

SB 652 - Aggravated battery of law enforcement officer to include correctional and juvenile correctional or detention officers. SC to retain bill for further study.

SB 628 - Evicting tenants for violating certain laws; county or district attorney can file action; eviction costs may be recovered. SC to retain bill for further study.

SB 629 - Joint shared custody and parenting time. The Chair stated that this bill will be "blessed" and the bill will be looked at more fully at a later date. (attachment 3 - written testimony submitted in SC, was distributed)

SB 597 - An act concerning crime and punishment; relating to preliminary exams; victims of domestic violence. Following discussion of this bill the SC recommended favorably for passage, Senator Harrington made a motion to pass the bill, Senator Gilstrap seconded. Carried.

SB 618 - KPERS, criminal penalty for certain false statements. SC recommended this bill favorably for passage. Following discussion, Senator Pugh moved to pass the bill out favorably and place it on the consent calendar, Senator Gilstrap seconded. Carried.

SB 631 - Search warrant to search premises for dead body. There was general consensus to leave this bill in SC. (no attachment)

SB 582 - Increasing penalty for lewd and lascivious behavior in the presence of child under 16 years of age The Chair began discussion on this bill but due to time constraints there was general consensus to discuss this bill as well as **SB 583 and SB 584** on Monday, February 23.

Meeting adjourned at 10:53 a.m. The next scheduled meeting is Friday, February 20.



State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215
FAX: 296-6296
TTY: 291-3767

STATEMENT OF
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 588
FEBRUARY 19, 1998

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 588. This bill would amend the language of K.S.A. 22-3212 and add a new provision, which would specifically provide for reciprocal discovery of expert witnesses in a criminal matter.

The change sought under K.S.A. 22-3212(d) is based on Rule 16(b)(1)(B) of the Federal Rules of Criminal Procedure. This change would provide for reciprocal discovery of a defense witness's reports when the witness is expected to testify at a hearing and the reports were prepared by the witness and relate to the witness's testimony. This change would allow the prosecuting attorney access to these documents in those situations when the defense witness will be testifying and the reports relate to the witness' testimony but it is not the intent of the defendant to introduce the report itself into evidence.

As K.S.A. 22-3212(c), is currently written, the prosecuting attorney is only entitled to discovery of scientific or medical reports when the defendant intends to produce these items at any hearing. If the defendant intends to have a witness testify regarding this material but does not intend to introduce the reports themselves into evidence, then the prosecuting attorney is not entitled to discovery of this material. The amendment to the statute would provide for the discovery of this material if the defendant intends to have a witness testify at a hearing and the reports relate to the witness's testimony, even if the defense does not intend to produce the actual report at the hearing.

This material is already required to be disclosed by the prosecuting attorney regardless of whether the material or the testimony of the witness which is based on the reports will even be introduced by the prosecuting attorney. This change will facilitate full disclosure of the relevant scientific and medical results or reports not only when the defendant seeks to introduce the material but also when the defendant, through witnesses, seeks to introduce testimony regarding the reports but does not

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intend to introduce the reports. These types of reports should be subject to discovery in the interest of justice, not only when the defendant intends to introduce the reports but also when the defense intends to introduce the testimony of a witness and the witness' testimony is based upon these types of scientific or medical reports.

K.S.A. 22-3212(c), is a new provision, which would require the prosecuting attorney to furnish the defendant a written summary of the findings and facts relied upon by any expert witness that the prosecuting attorney intends to use at any hearing. This subsection would also require the prosecuting attorney to furnish the defendant with the expert witnesses' qualifications. This change is based on Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure

K.S.A. 22-3112(e), is also a new provision. This provision would allow the prosecuting attorney to obtain reciprocal discovery from the defendant by way of a written summary of the findings and facts relied upon by an expert witness and the expert witnesses' qualifications, which the defendant intends to use at any hearing, if the defendant has first sought discovery pursuant to the discovery statute. If the defendant has not sought discovery but intends to use an expert witness on the issue of the defendant's mental condition at any hearing, the prosecuting attorney would also be entitled to discovery of a written summary of the findings and facts relied upon by the expert witness and the expert witnesses' qualification. This change is based on Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure.

These changes seek to address those situations in which either a prosecuting attorney or a defendant intends to rely upon the testimony of an expert witness and that witness has not prepared a written report or has been directed not to prepare a written report.

This amendment to the discovery statute would require the prosecuting attorney and the defendant to provide a written summary of the findings and facts relied upon by the expert witness and the qualifications of the expert witness, when either party intends to use an expert witness at a hearing. This change seeks to minimize the surprise that can result from the use of unexpected expert testimony, reduce the need for continuances, and provide each side with a fair opportunity to review and test the merits of the expert's testimony through focused cross-examination.

By requiring a party to provide the expert's written qualification, the requesting party is able to determine, prior to the actual hearing, if the witness is indeed an expert witness pursuant to K.S.A. 60-456(b). The written summary of the expert's findings and the facts relied upon will also enable the requesting party to adequately prepare prior to the hearing. These changes will more aptly allow the parties to engage in a search for the truth and at the same time provide decision makers with the necessary credible evidence to return a decision based upon the evidence. This will take us away from the trial by ambush type of combat that has no place in our judicial system.

On behalf of Attorney General Stovall, I would urge your favorable consideration of Senate Bill 588.

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Judiciary Subcommittee Report
Subcommittee Meeting 2/17-18/98
Senator Schraad
Senator Donovan
Senator Goodwin

Your subcommittee met on the above mentioned dates – and make the following recommendations to the full Judiciary Committee.

SB 517

Current law requires that jury questionnaires be sent by formal summons. This bill would eliminate this requirement and allow them to be sent without a formal summons (Sen. Goodwin). **Subcommittee recommends Favorably**

SB 636

In the case of adoptions, this bill allows for the judge, rather than issue a new birth certificate, to allow for use of the original birth certificate if deemed to be in the best interest of the child (Sen. Emert).

Subcommittee recommends Favorably

SB 579

This bill clarifies wording of the statute dealing with jury qualifications so as not to discriminate against blind potential jurors who may not be able to *read* and *write* – but are able to understand the English language sufficient to be able to respond to a jury questionnaire.

Subcommittee recommends Favorably

SB 552

Bill deals with access to presentence investigation reports, treating them the same as felony presentence reports.

Subcommittee recommends Favorably

SB 298

This bill deals with renewal of teacher certificates and the authorization of the board of education to receive criminal record information. The bill broadens those crimes that may be reported and could serve as reasons for denial of certificates.

Subcommittee recommends Favorably w/amendments.

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TESTIMONY TO SENATE JUDICIARY FAMILY LAW SUBCOMMITTEE
REGARDING "DUAL PARENT INVOLVEMENT ACT"
SB 629

By Jim Johnston, Wichita, Kansas

February 17, 1998

Children are born with want, love, and need of two parents. Most parents are simply ordinary people who love their children and both, while married, have had joint-shared custody, legal as well as physical. Why shouldn't that expectation continue? Divorce does not diminish a child's need for both parents; insecurities generated by divorce itself increase the child's need for assurance that he or she will not lose Mom or Dad. Regardless of the social problem that is under consideration - teenage pregnancy, suicide, drug abuse, juvenile delinquency, or any of the other pathologies that plague today's youth - the uniform answer from researchers is that, on average, children with two actively involved parents fare better.

Kansas now has an opportunity of having a child custody statute that is strongly and explicitly focused on the child's right to two parents. By discouraging contests between mother and father, the statute positions the court to seek the best rather than the worst from each parent. At this devastatingly emotional time, these parents must make decisions about the upbringing of their children in a scenario that they did not plan for, nor do they have the insight to fully understand. The presumption of joint shared custody allows both the parents and the court to focus on the means of assuring the greatest combined parental contribution to the welfare of the child. This focus will enable the parents to truly consider many of the dynamics involved in "jointly" raising children outside of the intact home prior to litigation. Importantly, these changes to the current law would do nothing to impair the protections already existing for children of those parents in the small minority that are not fit to share custody, or need to have limited access to their children.

This bill will enable the state of Kansas to declare unequivocally that, excluding fringe situations, dual-parent involvement must be expected, supported, and enforced (if necessary) by its government.

Current law does not clearly state this position. Today there is:

- No clear incentive or requirement for parental joint decision-making prior to litigation and
- No clear direction given to the judiciary to apply philosophically throughout Kansas

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Jim Johnston
Testimony to Senate Judiciary Subcommittee on SB 629
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The added preamble on page 1, and the changes made in Sections 1, 7, and 27 of the bill as drafted here will:

* Provide the philosophical basis for all involved parties in what Kansas' interest is in these matters. All laws and practices will tie back to this vision, and all parties, Parents, Attorneys, and Judges will understand this underlying philosophy.

* This bill "expects" good faith efforts towards a parenting plan in advance (and hopefully in place) of litigation. Parental responsibility requires cooperation, and not choosing to cooperate should not be an acceptable excuse. Section 1 immediately reinforces this philosophy.

* Attorneys, as "officers of the court", will "steer" clients towards greater cooperation rather than automatically operating in an adversarial manner.

* By requiring specific dialogue towards a parenting agreement, parents will better understand through direct and indirect education, the dynamics of parenting outside the intact home, and thus be better able to jointly decide on the best interests of their children together.

* Options for diverting from an equal or near equal amount of parenting time will still be available based upon circumstances.

Clearly this scenario is the next best arrangement to the two-parent intact family.

WHO BENEFITS?

CHILDREN

- By retaining both parents active and fully participating in their lives
- By focus being placed on children's needs to both parents
- And as research clearly shows, where there is greater parental involvement, there is significantly greater compliance with child support orders

PARENTS

- Through greater knowledge at the outset of issues around raising children outside the intact home
- By each having the maximum time available with their children fully considered and supported
- By there being less likelihood for litigation later, and
- Through greater ownership in developing the parenting strategy

WHO BENEFITS (Cont.)

COURTS

- Through less initial litigation and less relitigation
- By having a clear philosophy guiding actions statewide
- By having less strain on the system and
- By having the parties all focused on the children, and less on an "adversarial scenario"

KANSAS

- By having less crime, drug abuse, juvenile delinquency, etc.
- There will be less burden on taxpayers
- There will be less cost to child support collection and
- There will be a much healthier citizenry

Two additional points: the volume of this drafted bill is largely a result of changing the word "Visitation" to the phrase "Parenting Time". In this whole document, the phrase "parenting time" has been added 70 times in place of "visitation". Parents in the vast majority of cases, should never be viewed as "visitors" to their children. Words are powerful. If we use "visitation", we get used to a parent as a second fiddle in their relationship with their child. Let's reinforce "parenting", by changing this simple word.

Finally, in Section 14, letter (f) #9 of this bill as drafted, dealing with determination of appropriate child support, the specific line should be amended to read, "The value of services contributed by both parents". This would be consistent with the principles of dual parent involvement.

Thank you, and for the children of Kansas, I hope you will support these changes.

SUMMARY OF SIGNIFICANT CHANGES

Preamble: Clearly states a philosophy of maximizing dual parent involvement.

New Section 1: This section reinforces the expectation of parental cooperation with some teeth. Choosing not to cooperate should have consequences that a District Judge would have to consider.

Section 7: Provides punitive measures for intentionally making false sexual abuse allegations. This type of false allegation is devastating to the falsely accused parent and their relationship with the children. This must be dealt with severely. A legitimate concern may be raised as to whether this will discourage parents who sincerely believe there is abuse from saying so due to the potential penalty. I think this is adequately protected in the same section, letter (a) where "knowing" and "intent" to falsely accused is specifically stated as the definition of the crime.

Section 14: (f) (9) should be amended to read, "The value and services contributed by both parents." This would be consistent with the intent of dual parent involvement.

Section 27: (a) (1) where it has been added, "If child support is ordered, resources shall remain with both parties in amounts that allow the parties to support the child while the child is with each parent. etc." This is an important addition as it recognizes the reality that both parents will require financial child support as involved parents. The change here will require the Supreme Court's Child Support Advisory Committee to appropriately modify the guidelines approach to recognize the legitimate costs that will occur at each home.

Same section 27, (4) (a), in the existing sentence that is modified by a strikethrough, "When a child is placed in the joint *shared* custody of the child's parents, the court may further determine that the residency of the child shall be divided in an equal manner with regard to time of residency.", the underlined "may" should be changed to "shall", and the words "or near equal" should be inserted before the word "manner". These changes will limit the discretion that will occur with the sentence as written, and the "or near equal" addition will allow for the avoidance of arguing over half days or even hours in the day being "exactly" split out evenly. This may be an impractical law to enforce otherwise. In the same section below, in italics, the "or near equal" should be added following the word "equal", for the same reason above.