

Approved: 3/11/98 pm
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on March 10, 1998 in Room 313-S 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: Pedro Irigonegaray, Attorney
Susan Arnold, Executive Director, Best Interest for the Child
Representative Jim Morrison
Gene Osborne, Iowa
Verna Bagby, Kansas
Fred Goldman, California
Sherry Gerleman, Kansas

Others attending: See attached list

HB 2820 Persons Convicted of murder or manslaughter, parental rights may be terminated if victim was other parent of child

Following the Chair's brief review of **HB 2820**, Conferee Irigonegaray testified in favor of the bill. He expressed concern with media involvement at this meeting and stated that the issue addressed in this bill is not a "media" issue but an issue of "common sense". He detailed the bill, which he stated will "provide the courts with the authority to sever the parental rights of individuals convicted of capital murder or first degree murder, when the murder victim was the other parent of the parties' child", and requested the Committee rule in favor of it. (attachment 1)

Conferee Arnold testified in favor of **HB 2820**. She requested the Committee establish tough laws that force criminals to take responsibility for their actions. She discussed termination of parental rights of murders who murder their child or children's other parent and spoke about the needs of the children in these situations. She requested Committee vote yes on the bill. (attachment 2)

Conferee Morrison testified in favor of **HB 2820**, a bill which he called "Phoebe's Law", named for a woman in his district who was murdered by her husband. He discussed a law from the Commonwealth of Massachusetts called Lizzie's Law and the speed with which it passed the legislature. He requested Committee vote favorably for the bill. (attachment 3)

Conferee Osborne testified in favor of **HB 2820**. He shared personal testimony about his daughter who was brutally murdered by her husband and charged with a domestic violence killing and about his shock that this man who had murdered so violently still retained custody of his three daughters under 10 years of age. He requested Committee vote favorably for the bill. (attachment 4)

Conferee Bagby, testifying in favor of **HB 2820**, briefly shared her testimony about her daughter who was murdered by her husband on Valentine's Day. She stated that this man is the father of one of her daughter's sons. She also stated that she has often cared for both of her daughters sons since their birth but was required to relinquish one of the boys when the offender awarded custody of his son to his sister. She requested Committee vote yes on the bill. (no attachment)

Conferee Goldman testified in favor of **HB 2820**. He expressed concern about the laws today stating that laws used to be based on "Judeo/Christian principles" but that now they contain many loopholes. He stated that this law can overrule bad laws. He further stated that "kids" need security and the knowledge that they will be protected. He stated if a child is raised by a violent criminal the child is more likely to become violent as well. He requested Committee vote in favor of the bill. (no attachment)

Conferee Sherry Gerleman testified in favor of **HB 2820**. She stated that she moved to Kansas from Wyoming where her husband, a ministerial student, had attempted to kill her. She stated that she believed hers was the first case in Wyoming where visits between her son and husband were to be supervised until the child is 18 years old. She implored the Committee to "think of the children". (no attachment)

There was discussion regarding spousal murder as a result of battered wife syndrome and the enforcement of **HB 2820**. Conferee Arnold agreed that this situation was difficult but that “you can’t have it both ways”, that the children needed protection and that this law was needed. She stated that the outcome of the battered wife situation depends on the justice system. Conferee Irigonegaray stated that the subject needed to be looked at from the point of view of the law and that defense should not be confused with outcome. He stated that “this statute is not based on accusation but on conviction”. He also discussed “child in need of care” action and stated that Kansas has this mechanism already but by passing **HB 2820** the State is making a statement that there are requirements that must be satisfied and results that must be reached. Further discussion covered the following issues: grandparental or other family members rights; following severance, the ability of the child to still maintain an inheritance from the offender or the grandparents; and certain language in the bill. Senator Bond moved to amend **HB 2820** and change the language as follows: Section 1 line 21 - “terminate” to “sever” and on page 2 line 6 - “shall” to “may”, Senator Goodwin seconded. Motion carried. Senator Harrington moved to pass the bill out favorably as amended, Senator Petty seconded. Motion carried.

The Chair reminded the Committee Members about the meeting today in room 527 S, following Senate adjournment.

The meeting adjourned at 11:02 a.m.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-10-98 AM

NAME	REPRESENTING
<i>Susan Naboth Gohmert</i>	<i>Private Citizen</i>
<i>Frederick</i>	<i>" "</i>
<i>Verna Bagby</i>	
<i>Vicki Lynn Hessel</i>	<i>Budget Division</i>
<i>Jane O'Brien</i>	<i>Private Citizen</i>
<i>Cindy Maule</i>	<i>"Best Interest of the Child, Inc."</i>
<i>Susan Chaeel</i>	<i>Best Interest of the Child</i>
<i>Pat Wood</i>	<i>" "</i>
<i>Garrus Ann Brown</i>	<i>KS Govt Consulting</i>
<i>Juan Clark</i>	<i>KC DAA</i>
<i>Nancy Mikroski</i>	<i>Citizen -</i>
<i>Gary Dieter</i>	<i>Secretary Rep. Morrison</i>
<i>Florence Dieter</i>	<i>Secretary Sen. Brownlee</i>
<i>John Carlman</i>	<i>SRS</i>
<i>Leggy McMillton</i>	<i>Secretary ~ Rep. Mays Rep. Huff</i>
<i>Amy Light</i>	<i>AP</i>
<i>Amy Bolles</i>	<i>KCSDV</i>
<i>Rosetta Pybo</i>	<i>KCSDV</i>
<i>KEITH R HARDIS</i>	<i>CHRISTIAN SCIENCES COMM ON PUBLICATION FOR KS</i>

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-10-98 AM

NAME	REPRESENTING
John Shoemaker	Senate
Dipie Kelley	Senate
Susan Kresche	Senate
Sen. St. Phary	-
K. M. Howell	Judicial Council
Kathy Power	OSA

HOUSE BILL 2820 - AN ACT CONCERNING CHILDREN

Before Senate Judiciary Committee

Chairman: Senator Tim Emert

Ladies and Gentlemen:

I come before you today, Tuesday, March 10, 1998, to respectfully request your favorable vote on behalf of HB 2820, an act concerning children.

This bill will provide the courts with the authority to sever the parental rights of individuals convicted of capital murder or first degree murder, when the murder victim was the other parent of the parties' child. Violence cannot be tolerated in a civilized society. In its most extreme form, violence takes the lives of others. A parent who, by first degree or capital murder, deprives his or her child of the precious relationship with the other parent, should no longer be allowed to exercise the role of parent to that victimized child. This should be true whether the individual convicted is an adult or a juvenile. In the event the conviction is for second degree murder or voluntary or involuntary manslaughter, or any of the amendments thereto, the circumstances may not justify severance of parental rights.

We, as a society, have no greater responsibility than our children. When parents kill one another, they demonstrate by their conduct, gross disregard for the welfare of their minor child or children. Such gross disregard cannot be tolerated if we wish to maintain the child's best interests as our guide.

Senate Judiciary
3-10-98 AM
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Rodriguez

3-10-98
AM
att 1

I have practiced law in our state for approximately 25 years. Evidence and its role in establishing the burden of proof in a courtroom is something we lawyers spend a great deal of time struggling with. Depending upon the cause of action involved, the burden of proof changes. In criminal cases, the burden of proof on the government is beyond a reasonable doubt. In most civil cases, the burden is a preponderance of the evidence, more probably true than not.

Generally speaking, in a civilized society, prohibited conduct is developed in two ways. First, an act can, by its nature, be so awful we recognize it as *malum per se*. We know it's wrong by its nature. The other way we restrict conduct is when we determine an act to be *malum prohibitum*, an act that we prohibit, not because, on its face it's bad, but because its prohibition advances the needs of a civilized society.

Total disregard of a child's best interest is demonstrated when a parent kills his child's other parent and is convicted of the crime of first degree murder or capital murder. Such violence cannot be tolerated and necessitates parental severance. This bill should become law immediately, so as to provide the protection that children need.

STUD
3-10-98 #2

Chairman, and members of the committee; Thank you for allowing me to address you on this very important bill, H. B. 2820.

My name is Susan Arnold and I am Executive Director of Best Interest Of The Child, Inc. I am here today to speak to you on a matter concerning the best interest of the children of Kansas.

The American people and the citizens of Kansas have grown tired of excuses from criminals. We have grown tired of repeat offenders. We are tired of criminals petitioning our courts for frivolous lawsuits.

We, the people, have asked you, our lawmakers, to establish tough laws that force criminals to take responsibility for their actions and to pay for their crime. We are asking that of you again today.

In the State of Kansas an individual convicted of a capital crime or a murder automatically loses many of his rights as a citizen. He or she cannot ever purchase a firearm, vote, hold a liquor license or certain other state licenses. But, in the current system, even if you commit a heinous crime of murder of your child's other parent, there is nothing in the statues that addresses this as a reason to sever your parental rights. These life in prison felons have nothing better to do than control their children like puppets through our court system. Or in some cases, their release may come before the child is the age of majority and they simply wait and regain custody when released. And the children are then left to languish in foster or kinship care with no hope of immediate permanency of their lives while the murderer serves his or her sentence.

What happens to the children who are sent back to the perpetrators of domestic violence who have retained their parental rights? The U. S. Department of Health and Human Services has concluded in it's studies that domestic violence is the single most predicting factor of child abuse. Children who live in homes of domestic violence are 40 times more likely to be abused.

Termination of parental rights, as set forth in Kansas Statutes is a very serious decision. And must be made on a case by case basis. It means you will never again be allowed to make decisions concerning your child . It is an irreversible law. But, what better indicator of one's ability to parent do we have than a conviction of murdering the child's other parent? Why do you need parental rights while in prison? These children deserve to rebuild their lives with a new family. If you commit a capital crime, a crime of first or second degree murder or voluntary or involuntary manslaughter of your child's other parent, you should not be allowed to maintain your parental rights. Children who live in homes with domestic violence live in a state of persisting fear. Continuous persisting fear alters the development of a child's brain, resulting in

Senate Judiciary
3-10-98 AM
att 2

changes in a child's physical, emotional, behavioral, cognitive, and social functioning. These changes in a developing child contribute to the transgenerational cycle of violence as these young children become adolescents- and finally, the adults that shape our society, the adults that choose and determine our cultural values, the adults that raise the next generation of children in a new intragenerational vortex of violence. Andrew Vachss writes that, "Some of the most destructive violence against children doesn't break bones, it breaks minds."

In the best interest of the children of Kansas, please vote yes for H.B. 2820. Our children deserve to live in a safe and permanent home.

STATE OF KANSAS

STUD
3-10-98
att #3

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TOPEKA

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Member:
EDUCATION
Member:
FISCAL OVERSIGHT

March 10, 1998

Thank you Mr. Chairman and members of the Senate Judiciary for this opportunity to express my support for HB 2820 also known as "Phoebe's Law."

Just last year the Commonwealth of Massachusetts was presented with the need for an unusual law. The law became known as "Lizzie's Law" after five year old Lizzie Thompson. Lizzie's father, Charles Thompson, in August of 1995 murdered her mother in full view of Lizzie.

Lizzie's father, after being convicted of the murder and sentenced to prison, insisted that as her father he was entitled to demand visitation rights in prison! Mr. Thompson wrote from prison demanding that Lizzie be **required** to visit him in prison twice a month and accept his phone calls once a week. Relatives said, "Here is a man who killed our daughter...here he is, dictating terms to us?"

The Legislature very quickly responded to the request of Representative Paul E. Caron, a Springfield Democrat, to pass legislation correcting this attack on the victim of domestic violence who kill their partners.

This bill passed **without dissent** by the Legislature August 15, 1997. Governor William F. Weld signed the law a few days later. This "fast track" is what HB 2820 needs in Kansas.

HB 2820 addresses the rights of the victim of such violence. The thought that a murdering parent could possibly dictate who shall be the caregiver is unthinkable--but possible--without passage of HB 2820! I contend that such a parent is an "unfit" parent incapable of raising the minor child. So the parental rights of that parent should be severed. Doing so would prevent potential "abuse" of the child by such a parent.

Thanks for your time,

Representative Jim Morrison

Senate Judiciary
3-10-98 Am
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KANSAS NATIONAL ORGANIZATION FOR WOMEN

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FEBRUARY 12, 1998

TO: CHAIRMAN AND COMMITTEE MEMBERS FOR HB 2820

**FROM: GENE OSBORNE, TESTIMONY TO BE READ BY ANGIE FRITZ,
LOBBYIST FOR KANSAS NOW AT HEARING 3:30 PM, ROOM 313, 2/12/98.**

**RE: HB 2820 - TERMINATION OF PARENTAL RIGHTS WHERE ONE PARENT
IS CONVICTED OF MURDERING THE OTHER PARENT.**

Thank you Mr. Chairman and Committee Members:

My name is Angie Fritz and I am a lobbyist for the Kansas NOW chapter and I have been asked speak on behalf of Mr. Gene Osborne and read a brief statement from him regarding HB 2820.

In preface to his statement, I will tell you that his daughter, Krista Jordan, on March 29th, 1996, was stabbed 20 times in her home. It was a Friday morning about 8:30 am at the time of the murder and with the smallest child in the home. It is said that Krista had confronted her husband, an IRS agent, about him having an affair. Her husband claimed she committed suicide and it took 4 months for authorities to charge him with Second Degree Murder. The jury found him guilty of only manslaughter since the use of a kitchen knife indicated a crime of passion as opposed to an intentional murder. Her husband was only sentenced 49 months and is eligible for parole in 36 months.

Mr. Osborne's statement goes as follows:

"Please let me introduce myself, my name is Gene Osborne. In March 1996, in Johnson County, Kansas, my daughter, Krista Osborne Jordan, was brutally attacked by her husband and died as a result of 20 stab wounds.

As I would later learn, this wasn't murder, this was simply a domestic violence killing. In the nearly one and a half years it took to bring the killer to trial, while not violating his civil rights, I paid a visit to a well versed and quite learned lawyer in Johnson County to inquire about what would happen to the three little girls, all under 10 years of age.

To my absolute astonishment, I was told that under Kansas Law, the fact that their father had murdered their mother - did not make him a bad or unfit father. After a pause on my part that seemed almost endless I said "This must make Kansas women feel very secure knowing that a husband can murder the mother of his children, and then be awarded custody of their children after he is slapped on the hands for the Domestic Violence Killing."

Krista's husband became so enraged and out of control that he stabbed her 20 times. I am NOT ready to give him three little girls and take the chance that he will, AGAIN, lose control.

Are you ready to give him three little potential victims for his next out of control, violent, domestic episode? Thank you for your time. Gene Osborne"

*Smith Judiciary
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