

Approved

Date: *March 8, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:39 a.m. on March 7, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Lela Smith, Clerk of Court, Brown County, Kansas Association of District Court Clerks and Administrators (KADCCA)
Kathy Porter, Office of Judicial Administration (OJA)
Judge Paul Buchanan, 18th Judicial District, Sedgwick
Lisa Wilson, Clerk of Court, Jackson County

Others attending: see attached list

Minutes of the March 6th meeting were amended by striking the word "bill" and inserting the words "floor amendment" at paragraph 1 line 4, and were approved as amended on a motion by Senator Schmidt, seconded by Senator Gilstrap. Carried.

Written testimony from Sandy Barnett who presented oral testimony on **SB 235** at yesterday's meeting, was distributed. (attachment 1)

HB 2173—concerning expungement

Conferee Smith testified in support of **HB 2173**, a bill which relates to expungement of arrest records. She stated that petitions for expungement are filed as civil cases making them public record until the order for expungement is filed. She explained that this bill would close these case records allowing them to be disclosed only to certain parties. She also discussed amendments to two other statutes relating to expungement which would assure consistency within the law. (attachment 2) Discussion followed.

Conferee Porter testified in support of **HB 2173**. She discussed the purpose of her request to delete Section one of the bill, making the bill's provisions applicable to only the district courts as originally intended. (attachment 3)

Conferee Kleeson testified in opposition to **HB 2173**. He discussed the bill's potential impact on municipalities in terms of "increased costs, mandates, liabilities, etc." and urged rejection of the bill or at least amending it to protect municipalities. Lengthy discussion followed. (attachment 4)

HB 2174—concerning district courts; re: clerks

Conferee Buchanan testified in support of **HB 2174**, a bill which changes the method of appointing district court chief clerks. He discussed the inefficiency of current law regulating the method of appointment of clerks and briefly discussed provisions in this bill which seek to remedy this. (attachment 5)

Conferee Porter testified in support of **HB 2174**. She reviewed the purpose of the bill and reiterated much of the previous conferee's testimony. (no attachment)

HB 2175—concerning civil procedure; re: judgment liens

Conferee Wilson testified in support of **HB 2175** reviewing the bill which she stated proposes a clarification of procedures in Chapter 60 for elevating the status of a limited actions judgment to a lien against real estate. (attachment 6) Discussion followed.

HB 2082—concerning nonprobate transfer on death; re: nontestamentary nature

Following a brief review of **HB 2082** by the Chair, Senator Pugh made a motion that the bill be passed out favorably and placed on the consent calendar, Senator Donovan seconded. Carried.

SB 159—concerning the code of civil procedure for limited actions

SB 236—concerning the code of civil procedure; re: garnishment

Staff distributed copies of balloon amendments to **SB 159** and **SB 236** which would remove the forms from the statute book. Also distributed was Supreme Court Administrative Order No.159 requiring the Supreme Court by rule or order to approve forms. Senator Oleen moved to amend **SB 159** by adopting the balloon, Senator Schmidt seconded. Carried. Senator Goodwin moved to pass **SB 159** out favorably as amended, Senator Oleen seconded. Carried. Senator Oleen moved to amend **SB 236** by adopting the balloon, Senator Donovan seconded. During discussion Senator Pugh expressed concern regarding the lack of compensation paid to employers who must do garnishments. It was the consensus of the Committee that Senator Pugh write an amendment which would provide said employers \$15 per garnishment, the payment of which would be part of the judgment. In light of this the previous motion and second were withdrawn.

The meeting adjourned at 10:32. The next meeting is March 8, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 7, 2001

NAME	REPRESENTING
Elwaine F Pomeroy	KCA KCAA
Jeff Bottorero	Kansas State officials
Larry Kleiman	LKM
Shelley King	GBBA / KS Assn. of Defense Counsel
Joe Herold	KSC
Carolyn Meddendorf	Ks St News Center
Kath	The East Bonner Spire
Aaron Miles	Bonner Spire
Sign Spring	Farm Bureau
Mark Smith	" "
Jack Holtzen	" "
Kara Schwetz	Hiawatha High School
Sarah Cadue	Hiawatha High School
Janelle King	Hiawatha High School
Jennifer Cain	Hiawatha High School
Aimee Davidson	Hiawatha High School
Heather Lowe	Hiawatha High School
Marissa Ebel	Hiawatha High School
Jennifer Kruse	Hiawatha High School

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Sam Meines	Hiawatha High School
Stacey Marti	Hiawatha High School
Emily Brockhoff	Hiawatha High School
NATHAN WEDDUM	Hiawatha High School
Megan makee	Hiawatha High School
Lora Allen	Hiawatha High School
John Rost	Banner Springs High School
Kathy Olsen	Ice Bankers Assn



UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.orgSenate Judiciary Hearings
Senate Bill 235
March 6, 2001

Senate Judiciary Committee:

Senate Bill 235 brings to the forefront an important issue: Tracking domestic violence cases so that previous convictions can be easily identified.

K.S.A. 21-3412 defines the crime of battery, regardless of whether that crime occurred in a domestic relationship or between strangers. In 1996, K.S.A. 21-3412 was amended to enhance the penalties for each subsequent battery that occurred in the context of domestic violence. The tracking of each case is important for the courts to appropriately apply the enhanced penalty provision. Senate Bill 235 proposes separating the crime of battery from that of domestic battery, thereby giving domestic battery a different statute number than 21-3412. Having a separate statute number will undoubtedly make it easier to identify previous convictions relevant to the enhanced penalties.

But, it may cause more harm than good.

Separating the crime of domestic battery from other battery has three specific negative impacts:

1. It may return us to the point in time when battery of a partner is perceived as less of a crime than battery of a stranger.
2. It ignores the many other crimes that also occur as part of domestic violence.
3. Perpetrators will enthusiastically jump at plea agreements to battery charges without the "domestic violence" element to avoid enhanced penalties.

Domestic violence had long been ignored, often considered a "private matter" and rarely prosecuted. Precisely because K.S.A. 21-3412 addressed battery regardless of who the perpetrator or the victim was, it sent a clear message that it was just as much a crime to hit one's intimate partner or household member as it was to engage in a fight with a stranger. Increased awareness and understanding of the complexity and danger of domestic violence led to K.S.A. 22-2307, which directed law enforcement to adopt policies that, among other things, mandated arrest when probable cause existed that any crime had occurred in the context of domestic violence. Regardless of whether an arrest is made or not, K.S.A. 22-2307 also directs

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law enforcement to file a Standard Offense Report on all such incidents. The Standard Offense Report contains a checkbox to identify when the incident occurred between intimate or household partners.

Again, the increased awareness of the easy access batterers have to victims, the level of injurious behavior that occurs, the impact on children, and the potential for retaliation and lethality led to the enhanced penalty provisions in K.S.A. 21-3412. And, because these provisions are woven into the existing battery statute, it also ensures that battery in a domestic violence situation is perceived to be a crime just like any other battery – it is not its own class of crime, yet still acknowledges the uniqueness of domestic violence.

SB235 makes domestic battery its own class of crime; a precedent that we may not want to begin. The myriad other crimes that are also committed in the context of domestic violence would need to be revised to have a domestic violence crime and a non-domestic violence crime. As a State, we need to decide if we want all crimes that occur in the context of domestic violence to be a separate class of crimes. To date, there is no data indicating that having separate statutes increases arrest or prosecution rates. But, there is anecdotal evidence that having separate crimes allows batterers to more often plea to lesser charges.

The increase in arrests and convictions may indicate that domestic violence is now taken more seriously than ever before; we are on the right track. But we are not there yet. It is almost indisputable that prosecutors would be in a better position to ask for enhanced penalties if the information were available to them at the time of sentencing. However, *SB 235 is not the answer*. A database tracking system would allow the prosecution to have information readily available without creating the potential adverse effects SB 235 may bring, but there would be a fiscal impact.

The temptation to easily accept the merits of SB 235 without considering the potential full impact is great; it offers a quick and inexpensive fix for the problems prosecutors are encountering, but it may have serious unintended consequences.

Submitted by:

Sandy Barnett, Executive Director
KCSDV

John Isern, President Elect

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March 7, 2001

Mr. Chairman and Members of the Committee:

I am here speaking today on behalf of the Kansas Association of District Court Clerks and Administrators (K.A.D.C.C.A.). We appreciate the opportunity to state our views on HB 2173.

K.S.A. 22-2410 relates to expungement of arrest records. Arrest records are records that have not and will not be filed in the courts. These are records that a prosecuting attorney chooses not to file with the court for reasons that are unknown to the courts. There is no case on file with the courts, but the arrest itself can be expunged. The petition for expungement is filed as a civil case that becomes a public record until the order for expungement is filed. Because of the nature of this process and the fact that no case is on file with the courts, we believe the case should be a closed record upon filing of the petition for expungement, as it may take 1 to 3 weeks before the "Order of Expungement" is filed. Until the order of expungement is filed with us, the arrest record remains with the originating arresting agency.

We would also like to amend two other statutes regarding expungements to make the language consistent with the changes incorporated in SB 482 of 1998. K.S.A. 22-2410 and K.S.A. 12-4516a currently require the clerk of the district court to send a certified copy of the expungement order to the KBI. The amendment would add the requirement that the KBI notify the FBI that the records have been expunged to be consistent with K.S.A. 21-4619 and K.S.A. 12-4516.

Thank you for allowing me the opportunity to speak to you today on these issues. I would be happy to answer any questions you may have.

KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS

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Senate Judiciary Committee

Testimony on House Bill 2173
Wednesday, March 7, 2001

Kathy Porter
Office of Judicial Administration

When House Bill 2173 was originally drafted, municipal courts were included in the bill. After checking with the League of Kansas Municipalities, however, it is clear that extending the bill's provisions to municipal courts would cause municipal courts to incur training and other costs.

Deleting Section One of the bill would make the bill's provisions applicable to only the district courts, and would accomplish the purpose for which the bill was introduced. Thank you, and I would be glad to stand for any questions.

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League of Kansas Municipalities

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TO: Senate Judiciary Committee

FROM: Larry Kleeman, Assistant Legal Counsel

DATE: March 7, 2001

RE: Opposition to HB 2173

I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2173. This bill, recommended by the Judicial Council for district courts, was written to apply to municipal courts as well. In the past, because of the huge impact on municipal courts in our large cities, the League testified against the original bill that would allow arrest records to be expunged.

The current bill, as written, would require that once a petition for expungement is filed, the arrestee's municipal court file be separated from other records and only released to certain individuals. Again, the problem is the potential impact on the municipal courts. Whether the files are hard copy or computer files, the potential is for increased cost to somehow segregate computer files or create a separate filing system for the hard copy records. In addition, if the records are inadvertently released, there is the potential for liability for the city.

Therefore, the League urges the Committee to reject HB 2173, or at least amend it to repeal K.S.A. 2000 Supp. 12-4516a. The current expungement procedure for district courts at K.S.A. 2000 Supp. 22-2410 encompasses "any person who has been arrested in this state." This would include arrests made by any law enforcement agency, including by city police departments. Because persons arrested on a city ordinance violation can seek expungement from district court, the municipal court expungement statute at K.S.A. 2000 Supp. 12-4516a is unnecessary. And, as I previously mentioned, the potential liabilities and burdens upon the hundreds of municipal courts in our state (many of whom probably have never entertained an expungement motion) would be great. District courts are certainly more prepared for this statutory mandate and more than likely already have procedures in place to handle the filing and privacy issues that will certainly arise.

Once again, I would like to thank the Committee for the opportunity to appear before you today in opposition to HB 2173.

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Senate Judiciary Committee

Testimony in Support of HB 2174
Wednesday, March 7, 2001
Chief Judge Paul Buchanan, 18th Judicial District (Sedgwick County)

I am Paul Buchanan, Chief Judge, 18th Judicial District.

Thank you for the opportunity to appear today in support of House Bill 2174. This bill gives authority to the Chief Judge to make appointments to the court staff.

I remember being in a law firm which had about the same number of members as there are judges in Sedgwick County. The members agreed that the firm's carpeting would be selected with the approval of a majority of the members of the firm. We (and I don't exclude myself) had the most ugly carpet ever designed.

The Chief Judge is picked by the Supreme Court. The job is not one where every decision is a popular decision. By giving all the judges authority to participate in the hiring process, there is a chance for pay back for an earlier unpopular decision of the Chief Judge.

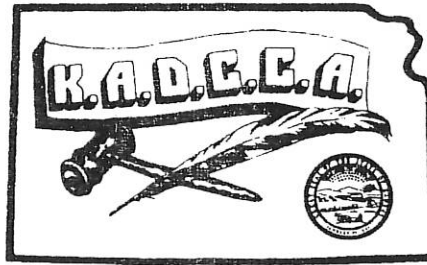
I remember in my early years as a judge, it was time to appoint a Clerk of the District Court. An outside committee had been appointed to review the applications, everyone had been given the opportunity to apply. The committee had made its recommendation. There were a myriad of reasons why not to accept the recommendation. The problem was eventually solved by the Chief Judge carrying a legal pad to each judge, avoiding the problem judges, and asking for a signature until he got a majority.

I urge enactment of HB2174, as introduced.

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**House Bill No. 2175
JUDGMENT LIENS
K.S.A. 60-2202 and K.S.A. 60-2418**

TESTIMONY

By: Lisa A. Wilson, Clerk of the District Court (Jackson County)

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding House Bill No. 2175. This bill proposes a clarification of procedures set forth in K.S.A. 60-2202(b) and 60-2418(a) for elevating the status of a limited actions judgment to a lien against real estate.

These two statutes deal, in part, with making a Chapter 61 judgment a lien on real property of judgment debtors in counties wherein their property is located. The status of the judgment in the county of origin should have the same force and effect as that given it in any other county where the judgment is filed; thus, it should not be a lien on real property in any other county until after the proper filing and fee, as provided by law, have been made in the originating county.

Since all attachments for enforcement of the judgment continue to issue from the originating county, this insures that proper process is issued for the current status of that judgment. To this end, we are requesting the insertion of the words "original" and "subsequently" in **Lines 39 & 40 on Section 1** of the bill pertaining to K.S.A. 60-2202(b), and then inserting wording in Section 2 pertaining to K.S.A. 60-2418 to agree with and further clarify this process.

Again, thank for allowing us the opportunity to appear before you today on this bill. I would be glad to entertain any questions you may have.

**KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS**

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