Approved
Date: 3-14-02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:37 a.m. on March 13, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Bob G. Odell, Sheriff, Cowley County
Oren K. Skiles, Chief of Police, Arkansas City
Larry W. Dobbs, Chief of Police, Winfield
Judge Janice D. Russell
Kathy Olsen, Kansas Bankers Association (KBA)
Matthew Goddard, Heartland Community Bankers Association (HCBA)

Others attending: see attached list

The minutes of the March 12th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

SB 520–establishing the office of district attorney in the 19th judicial district
Senator Goodwin reviewed her bill, **SB 520**, a bill which would establish an office of district attorney in Cowley County, Kansas. She briefly discussed the purpose for the bill and introduced conferees from her county.(no attachment)

Conferee Odell testified in support of **SB 520,** a bill which he stated would "greatly increase the professionalism and efficiency of the county's prosecutorial staff." He discussed how the bill would accomplish this.(attachment 1)

Conferee Skiles testified in support of **SB 520.** He stated there was an increase in the number of arrests in Cowley County due to illegal drug use and he discussed the need for increased prosecutorial abilities. On inquiry by Committee he stated that funding for a district attorney's salary would be the county's responsibility.(attachment 2)

Conferee Dobbs testified in support of **SB 520**. He reiterated the need for a well qualified district attorney in the 19th judicial district.(attachment 3) Following discussion, Senator Donovan moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

Sub HB 2673–CINC; changing definition of sexual abuse
Conferee Russell testified in support of **Sub for HB 2673**, a bill which expands the definition of the crime of contributing to a child's misconduct or deprivation. She discussed a certain Court of Appeals case and the problem which was created as a result of it and suggested a solution to the problem.(attachment 4)

HB 2771–requires garnishee to furnish a fax and email number for service of process
Conferee Olsen testified in support of **HB 2771**. She reviewed the purpose of the bill and discussed its provisions. Following discussion the Chair suggested certain amendatory language be added to the bill to provide more latitude for the garnishee and to establish a place to which the garnishee may file his fax number or email number. The conferee agreed to provide Committee with amended language at a later date.(attachment 5)

Conferee Goddard testified in support of **HB 2771**. He discussed how the process of dealing with garnishment orders works and stated that the use of fax in service of process has worked smoothly thus far. He cautioned that an increase in people performing these services increases the risk of sending information to an incorrect fax number. He stated that this bill would make the process uniform.(attachment 6)

The meeting adjourned at 10:30 a.m. The next meeting is March 14, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-02

NAME	REPRESENTING
Gary Potts	Winfield Police Dept.
Ed L. Odell	Cowley SO.
Pam K. Stokes	Kansas City Police Dept.
Kathy Olsen	Ks Bankers Assn.
Susan Bechard	KCDAA
Bill Brady	Ks Gov't Consulting
Matt Goddard	Heartland Community Bankers Assoc.
Sarah Sargent	Kansas Children's Service League
Brenda Harmon	KSC
Joe Herold	KSC
Rosilyn James-Martin	SRS-Children/Family Policy
Lui Hyten	Judicial Branch
Keith R Landis	Christian Science Committee on Publication for Kansas
Amber Frost	Ottawa University
Michelle Ufford	Ottawa University
Marianne P. Walker	Ottawa University
Amber Hull	Ottawa University
Tonia Salvini	Ottawa University
Michael Lewis	Juvenile Justice Authority

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-02

NAME	REPRESENTING
Cory Fuller	Ottawa Univers. Ty
Sarah Mavity	Ottawa University
Melanie Bowman	Ottawa University
Amanda Nitcher	Ottawa University
Jean Barbe	KADC
Jan Russell	10th Judicial District

Office of
Sheriff of Cowley County
Bob G. Odell, Sheriff Craig King, Undersheriff

JUDICIARY COMMITTEE
TESTIMONY IN SUPPORT OF SENATE BILL 520
March 13th, 2002

Honorable John Vratil, Chairman:

My name is Bob G. Odell and I have been Sheriff of Cowley County for the last 17 years. I served in various other capacities in the sheriff's office for 18 years before that, and as a result, I have personally observed how the County Attorney's office has changed over those 35 years. One thing is immediately apparent to me from the viewpoint of that observation – the people and law enforcement agencies in Cowley County need to be served by a District Attorney.

Because that need is so obvious to me, I am here today to offer testimony in support of Senate Bill 520 that would greatly increase the professionalism and efficiency of our prosecutorial staff by creating a District Attorney's office in the 19th Judicial District.

In the decade of the 60s, life took place at a much more relaxed pace. During this time, the County Attorney worked only part time. In addition to his duties as prosecutor, the County Attorney would also pursue civil litigation on the side – he would even pursue collections, from time to time. The slow pace of crime and prosecution would allow the County Attorney to be able to take nearly half the week off, and still perform all required duties.

In contrast, the current County Attorney in Cowley County has two assistants. The crime and workload continue to escalate to the point where his workload really requires the addition of a third assistant. No one on the County Attorney's staff has any spare time. In fact, it is fairly routine to see all members of the office working on evenings in the law library. Beside that, the County Attorney and assistants are called after-hours on a regular basis to prepare and approve search warrants and interpret the law for us in law enforcement.

I respectfully suggest to you that our present County Attorney is already working and producing at the level of a District Attorney without the advantage of officially being a District Attorney. This is a situation that we have a chance to correct. Therefore, I respectfully urge you to do so by favorably reporting out Senate Bill 520.

I am available for questions, should you have any at this time.

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CITY OF ARKANSAS CITY

POLICE DEPARTMENT

OREN K. SKILES
Chief of Police

JUDICIARY COMMITTEE
TESTIMONY IN SUPPORT OF SENATE BILL 520
March 13th, 2002

Chairman Vratil and Members of the Committee:

I am here to testify in support of Senate bill 520 establishing a District Attorney's office in Cowley County.

My name is Oren Skiles, and I am the Police Chief in Arkansas City, Kansas. I have held this job for 8 years this fall. I have been a Police Officer for 41 years and a Police Chief for 27 years. I have worked with and observed the current County Attorney office as they struggle to keep up with their current work load.

The law enforcement agencies in Cowley County have consistently increased the number of arrests. In Ark City alone, arrests increased 8% in 2001 over 2000 figures. In the area of illegal drugs, seizures of methamphetamine labs in Cowley County have consistently kept us ranked in the top 4 counties in the state. Last year alone, we encountered in excess of 59 methamphetamine production related situations. With this increase the present office has been stretched to the point where the prosecution of other crimes does not always get the attention needed.

It is my feeling that by going to a District Attorney office in Cowley County we would be able to increase our prosecution abilities by attracting highly qualified attorneys. I am aware of the fact this bill only increases the salary of the District Attorney. However, it would be my hope that this would lead to the upgrade of the salaries of the entire office.

In closing I would ask the passage the bill sponsored by Sen. Goodwin---Senate Bill 520.

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Working together we CAN make a difference!

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WINFIELD POLICE DEPARTMENT

812 Millington
Winfield, KS 67156

Larry W. Dobbs, Chief of Police

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TESTIMONY IN SUPPORT OF SENATE BILL 520
SENATE JUDICIARY COMMITTEE
March 13, 2002

Chairman Vratil and Members of the Committee:

As a law enforcement official of Cowley County for twenty-seven years, I support Senate Bill 520, which calls for the reclassification of the position of county attorney to district attorney for the 19th Judicial District. The reclassification would significantly enhance the current salary of approximately $50,000 for the chief prosecutor of Cowley County. The chief prosecutor spends endless hours reviewing and prosecuting cases, in addition to numerous other administrative duties and responsibilities. In recent years, Cowley County has had reputable prosecutors leave office for better pay and attorneys declining to seek office because of the disparity in compensation versus the private sector. There is no question the position of county prosecutor in Cowley County is underpaid.

Proposed Senate Bill 520, comes at a critical time for law enforcement and the citizens of Cowley County. 2001 crime reports for the county indicate that crime is rising. One of the greatest challenges currently facing law enforcement in Cowley County is drug abuse, in particular the production of methamphetamine. Crime reports released by the Kansas Bureau of Investigation the past two years have shown that Cowley County is one of the top five counties in the state for meth labs seized. Law enforcement in Cowley County has been proactive through the formation of a multi-jurisdictional Drug Task Force. This task force has not only been aggressive through enforcement, but through educational programs within the schools, businesses and civic organizations. Cowley County needs strong and aggressive prosecution of offenders in order to help address this increase in criminal activity.

To meet the challenges facing the criminal justice system and our Kansas communities, it is imperative that communities have the opportunity to select the best qualified candidates for chief prosecutor. For the citizens of Cowley County to obtain this goal, the first step must be to change the monetary compensation that Senate Bill 520 provides. The county prosecutor serves as a hub to the workings of the local criminal justice system and is key to building and maintaining an acceptable level of public trust within the community. The dedicated efforts of our law enforcement officers is futile without effective prosecution. I believe the passing of this bill would broaden the base of well qualified and competent candidates seeking the role of public prosecutor. I realize the passing of this proposed legislation will impose an unfunded mandate upon local county government. Yet, how can we place a price tag on a criminal justice system which has an obligation and responsibility to its community and to the victims of crime?

Respectfully submitted,

Larry W Dobbs

Larry W. Dobbs

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To: Members of the Senate Judiciary Committee
From: Judge Janice D. Russell
Johnson County Courthouse
Olathe, Kansas
913-715-3810

Substitute for House Bill 2673

The Problem

In April, 2001, the Kansas Court of Appeals decided and published *State v. VanHecke and Gault,* 20 P.2d 1277, 2001 Kan.App.Lexis 266. In that case the Court of Appeals reversed the district court's decision to dismiss charges against two high school teachers who were accused of having consensual sexual relations with students that were 16 and 17 years of age, respectively. They had been charged with a violation of K.S.A. 21-3612(a)(1), contributing to a child's misconduct or deprivation.

It appears that they were charged under this statute because a) the girls involved were more than 14 years of age, so charges of statutory rape (K.S.A. 21-3502) were not possible; b) the girls involved were more 16 years old or more, so charges of indecent liberties with a child (K.S.A. 21-3503) were not possible; and 3) the amendment to K.S.A. 21-3520 (unlawful sexual relations), which the legislature specifically amended in 2000 to include sexual relations between a high school teacher and his or her student, was not in effect at the time that these acts took place.

This case is not limited to situations that involve an adult and a child. So long as one participant is under the age of eighteen, any sexual contact is included in the broad sweep of the case. Since K.S.A. 21-5303 includes "any . . . touching . . . done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender" the list of proscribed activities is very broad indeed. The net effect of the case is that it makes any sexual activity, including just kissing, a violation of K.S.A. 21-3612(a)(1), so long as one of the parties is less than 18 years old. Sex between a 20 year old boy and his 17 year old girlfriend would subject him to prosecution under the statute. Sex between two 17 year olds would potentially subject both of them to prosecution. Even two 17 year olds who kiss each other would be subject to prosecution under the sweeping interpretation of the statute.

The legal effect of the case is that it broadens the scope of sex crimes involving children dramatically. The legislature has carefully set age limits for sex crimes against children: statutory rape (sex with a child less than 14); indecent liberties (fondling or touching a child 14 to 16); aggravated indecent liberties (age cut-offs of 14 or 16, depending on the activity). This

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decision effectively sweeps away those age limits.

Since the case was not appealed to the Supreme Court and is a published case, it stands as binding precedent. It will assuredly lead to selective prosecution, as there is no way that the court system or the district attorneys' offices can prosecute all the teenagers who are kissing each other.

The Statutory Problem

The root of the statutory problem that has brought about this interpretation lies in an intertwining chain of definitions:

- K.S.A. 21-3612(a)(1) includes this definition of contributing to the misconduct of a child: "(1) Causing or encouraging a child under the age of 18 years of age to become or remain a child in need of care as defined by the Kansas code for care of children;"

- K.S.A. 38-1502 includes in its definitions of a child in need of care a child who has been "sexually abused."

- K.S.A. 38-1502(c) defines sexual abuse as "any act committed with a child which is described in Article 35, Chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603 and amendments thereto, regardless of the age of the child." (Emphasis added.)

Suggested Solution

If the legislature strikes the language underlined in the preceding paragraph, then only those acts that are intentionally defined as criminal by the legislature would serve as grounds for finding a child to be a child in need of care, and consequently only those acts intentionally defined as criminal by the legislature would serve as grounds for charging a person with contributing to the misconduct of a child.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 12, 2002

To: Members of the Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2771: Service of Process on Garnishments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2771** and the proposed amendments to K.S.A. 61-3003.

As many of you recall, the 2000 Kansas Legislature passed SB 504 which made sweeping changes to Chapter 61 dealing with Limited Actions. K.S.A. 61-3003 contains information relating to service of process with regard to garnishments.

Since these changes have become effective and as the new procedures become more familiar to the parties involved, suggestions for improvements are inevitable. One of the changes made in 2000 was to allow garnishments to be served by telefacsimile and by e-mail. Many garnishees have more than one fax number and e-mail address. As banks (garnishees) started receiving garnishments by fax machine, we started receiving calls from them that they needed to be able to designate one fax number to which all garnishments could be directed.

On the average, banks in urban areas can receive up to 75 garnishments per week. In order to assure that each garnishment is dealt with in an effective manner, we would like the right to designate one place – one fax number and/or one e-mail address – where garnishments could be collected and properly answered each day.

The fear from our members is that these garnishments could easily be misplaced if not sent to a designated fax number. The concern with service of process by e-mail is even greater with the number of possible e-mail addresses in each bank. Many bank employees are required by bank regulatory agencies to take their annual vacation in two-week increments. This could pose a problem with regard to the 10-day answer period for each garnishment. Allowing each garnishee to designate the appropriate e-mail address for service of process will assure that the garnishment gets to an address that will be regularly checked by a person qualified to handle garnishments.

As drafted, this bill would ask garnishees to designate a fax number and/or an e-mail address to which they will receive service of process on garnishments. It would then be up to the garnishing creditor to contact the garnishee to find out what the appropriate fax number or e-mail address is before attempting service on the garnishee.

HB 2771 is designed to benefit all parties to the garnishment process by assuring that service of process is received by the garnishee in the manner in which it can be effectively dealt with. We respectfully request that the Committee act favorably on **HB 2771**.

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HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

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To: Senate Judiciary Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 12, 2002

Re: House Bill 2771

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Judiciary to express our support for House Bill 2771.

The bill requires garnishees to designate a fax number and e-mail address for service of process for garnishments. Rather than adding another obligation for garnishees to meet, however, the requirements in HB 2771 offer more of an opportunity. It is an opportunity for the garnishee to designate how and where it should receive the service of process.

As financial institutions, the members of HCBA deal with garnishment orders on a daily basis. Our members in Kansas have over 600,000 deposit accounts. However, only a handful of our members receive garnishment orders via fax and those that do report that they receive very few by that method. I am unaware of any of our members being serviced by e-mail.

Thus far, service of process by telefacsimile has been a smooth process for HCBA members. This is because the attorneys performing the service have called ahead and asked to what phone number the institution wants the garnishment order faxed. This ensures that the service of process is directed to the appropriate personnel at an institution. However, as the number of attorneys performing service of process by fax grows, so does the risk that faxes will be sent without first asking what fax number should be used. At that point, there is a greater risk that a problem could occur.

HCBA believes that the brief experience Kansas has with service of process by fax shows that the system works best when the garnishee designates a fax number for service. House Bill 2771 takes a process that has proven to be efficient and effective and makes it a uniform process in law.

We respectfully request that the Senate Committee on Judiciary recommend HB 2771 favorable for passage.

Thank you.

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