

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on March 25, 2003 in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Others attending: see attached list

Final action on:

HB 2132 - Increasing fee charged to inmates on work release from county jail

Chairman Vratil reviewed **HB 2132**, and explained that this bill relates only to work release inmates. He stated that there was no fiscal impact on the state, and there would be a positive fiscal impact on the counties.

After brief discussion, Senator O'Connor made a motion to recommend **HB 2132** favorably, seconded by Senator Goodwin, and the motion carried.

HB 2297 - Garnishment; release of funds if no order to pay issued

Chairman Vratil reviewed **HB 2297**, and said there was an amendment from the Revisor. He commended Senator Schmidt for working with the Revisor's staff in drafting this amendment and basically rewriting current statutory law so that it makes a little more sense and reads a little easier without changing the substance. He explained the proposed amendment incorporates the amendment proposed by this bill. (Attachment 1)

Committee discussion regarded the request by the Kansas Bankers Association to change the "shall" back to "may" as in the original language of the bill which the House Committee had amended to use the word "shall". The Chair explained that the KBA was concerned that there is some time and effort in tracking these garnishments, and the garnishment may not be released before the 60 days expired. He said the bankers did not want to be held responsible for failing to release that garnishment on the 61st day, and wanted a little extra time to perform that administrative function.

Senator Schmidt made a motion to adopt the amendment before the Committee with the additional change of striking the word "shall" and replacing it with "may" in the two places discussed. The motion was seconded by Senator Goodwin, and the motion to amend carried.

Senator Schmidt moved to report **HB 2297** favorably as amended, seconded by Senator O'Connor, and the motion carried.

HB 2271 - Certain crimes against property, raising \$500 threshold to \$2,000

Chairman Vratil reviewed **HB 2271**, and explained the House amendment of raising the threshold for felony theft from \$500 to \$1,000. He said it also called for graduated penalties depending upon the amount of the theft with a severity level 5 nonperson felony for thefts of greater than \$100,000, a severity level 7 nonperson for \$25,000 to \$100,000, a severity level 9 for \$1,000 to \$25,000, and then a Class A nonperson misdemeanor for under a \$1,000. He stated he did not have any amendments submitted for this bill.

Senator Schmidt questioned the rationale for the change in criminal damage to property in Section 3 on page 4, and said it was not included in the testimony that the Committee received during the Senate hearing on the bill.

Senator Schmidt made a motion to strike Section 3 on page 4, renumber accordingly, leaving the changes in the proposed statute which would still produce the bed space savings, and leave the threshold for

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criminal damage to property at \$500 or current law, and report the bill favorably as amended. The motion was seconded by Senator Oleen.

Committee discussion followed regarding bed space impact which would be negligible. The Committee discussed testimony given during the hearing on the bill from several sheriffs supporting this bill as they could handle inmates locally rather than taking them to the state level.

The Chairman called for a vote on the motion to pass **HB 2271** out favorably as amended. The motion carried.

HB 2125 - Child in need of care code, child's current foster parents could not be excluded from certain proceedings, emergency change of placement

Chairman Vratil reviewed **HB 2125**, and said that at the time of the hearing there was a question about the definition of "interested parties". He distributed copies of the requested statutory definition from Mark Gleeson, Office of Judicial Administration. (Attachment 2)

Committee discussion involved concerns about the confidentiality of a child and expanding the hearings each year as to who should be included.

Chairman Vratil explained that this bill is written into three very distinct issues, and if the Committee desires to modify the bill to include or delete any one or more of the three issues, it would be easy to do. A question was raised regarding whether the language in the bill raises doubts as to whether the judge knows what is best for the child. The Chairman clarified that with the definition of "interested party" in the current statute, the judge has a great deal of discretion and control over who is allowed to attend the hearing. The proposed bill would have the affect of limiting that discretion.

Discussion continued regarding the pilot project portion of the bill, and clarification was made that the pilot program was put under the Office of Judicial Administration as a result of a compromise, and that OJA would report back the results of the project. Chairman Vratil stated that the expense of the pilot project was approximately \$7,000.

Senator Goodwin made a motion to amend **HB 2125** by deleting everything except the pilot project with the understanding that the results be brought back to the appropriate Committee before this is expanded any further. Senator Schmidt seconded the motion.

Discussion followed regarding which judicial districts would be targeted for the pilot project. Kathy Porter, Office of Judicial Administration, stated there would be one rural district and one urban district, but the districts have not been officially chosen yet. Senator Oleen expressed concern about making sure the people involved are properly trained.

Senator Oleen made a motion to amend the bill on page 2, line 22, to read "both of whom have participated in a parent advocate orientation program". Senator Goodwin said she accepted that as a friendly amendment and Senator Schmidt agreed with his second to the motion.

The Chair called for a vote on the motion including the friendly amendment. The motion carried.

Senator Goodwin moved to recommend **HB 2125** favorably as amended, seconded by Senator Schmidt, and the motion carried.

HB 2133 - Municipal courts collecting fines and court costs

Chairman Vratil reviewed **HB 2133** which involved the Municipal Court of Wichita and the court's debt collection practices. He referred to the proposed amendment by the City of Wichita which was passed out during the hearing on the bill. He explained the amendment would keep all their debt collection practices within the Wichita Municipal Court, and clarified they would not go to the district court to file their judgements and use the district court services to attempt to collect those municipal court fees, fines, penalties, etc. (Attachment 3)

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Considerable discussion followed. The Chair explained that this is all new statute and language, and that the compromise worked out is the amendment that has been offered.

Senator Donovan made a motion to substitute the language provided by the City of Wichita for the language currently in the bill and to create a substitute for **HB 2133**, and seconded by Senator Schmidt.

After considerable discussion and concern about taking final action on this bill today, the Chairman asked what the desire of the Committee was on **HB 2133**.

Senator O'Connor made a motion to table **HB 2133**, and did not require a second or discussion. The motion carried.

Chairman Vratil explained that **HB 2133** would come off the table until a committee member initiates a motion to bring it off the table.

The Chairman expressed his appreciation to Committee members for their hard work and attention during the session, and commended them for their good public work.

The meeting was adjourned at 10:30 a.m.

Proposed Amendments to HB 2297

Be amended:

On page 1, in line 16, by striking all after "60-739."; by striking all in lines 17 through 32 and inserting the following: "(a) The court shall direct the garnishee to pay to the court such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to property other than earnings of the judgment debtor;

(2) ten days have passed since receipt of the answer of the garnishee by the court; and

(3) no reply to the answer has been filed.

(b) The court shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee shall release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the court has been received within 60 days following the garnishee's receipt of the order of garnishment such receipt.";

Also on page 1, in line 34, by striking all after "61-3512."; by striking all in lines 35 through 43;

On page 2, by striking all in lines 1 through 7 and inserting the following: "(a) The court shall direct the garnishee to pay to the court such amount that the garnishee is holding, as indicated by the answer, or such lesser amount as warranted, if:

(1) The garnishment has attached to property other than earnings of the judgment debtor;

(2) ten days have passed since receipt of the answer of the garnishee by the court; and

(3) no reply to the answer has been filed.

(b) The court shall promptly refund to the judgment debtor any overpayment of the claim. The garnishee shall release the funds, credits or indebtedness that have been attached pursuant to the order of garnishment if no order to pay the court has been

received within 60 days following the garnishee's receipt of the order of garnishment.";

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Date: March 12, 2003
To: Senator John Vratil
From: Mark G. Gleeson
Re: CINC Interested Party definition

HB 2125

At today's Senate Judiciary hearing you requested a definition of Interested Party as used in the Kansas Code for the Care of Children. The definition and referenced statute are as follows:

K.S.A. 38-1502d (e) "Interested party" means the state, the petitioner, the child, any parent, any grandparent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto.

K.S.A. 38-1541 Determination of interested party. Upon motion of any person with whom the child has been residing or who is within the fourth degree of relationship to the child and who desires to have standing to participate in the proceedings regarding the child, the court may order that the person may participate in the proceedings. Upon the filing of a motion, the court may send to the department of social and rehabilitation services a copy of the motion. Upon its receipt, the department shall make an investigation of the advisability of the matter and report its findings and recommendations to the court. In determining whether to enter an order, the court shall take into consideration the length of time the child has resided with the person, the nature of the custody, the relationship between the child and the person and the degree to which the person has been standing in the place of or assumed the obligations of the child's parents. The status as an interested party granted pursuant to this section may be terminated at any time by order of the court.

Please let me know if you desire more information or if you have questions.

Senate Judiciary
3-25-03
Attachment 2-1

TESTIMONY

Date: March 17, 2003

To: Senate Judiciary Committee

From: Jay C. Hinkel, Assistant City Attorney
City of Wichita, Kansas

Subject: *Technical Amendment Offered in Support of HB 2133*

The changes to the bill presented to this committee address issues raised by or anticipated from other conferees. The amended bill incorporates the text which passed the House, and places it in the appropriate sections of the existing municipal code.

The change in approach, which all other changes merely implement, is transfer of civil collection of debts owed to the court to the municipal court itself. Collectively these changes follow the pattern used by existing statutes to have criminal district court debts enforced by the civil division of the same court. The limited proposed changes to the municipal court's jurisdiction and procedure would be available for its use only. The City would collect unpaid restitution directly with its other debts. No private person or other legal entity would have the ability to seek redress through this limited authority. The proposed changes explicitly incorporate the procedures from chapter 61 courts of limited civil jurisdiction.

The proposed changes would not be mandatory; a municipality would be required to take affirmative action to accept this authority and adopt the related procedures. The status quo would remain unless a municipality would choose to undertake the collection of its court's unpaid obligations. If it were to accept this opportunity, it would also be accepting the burden of handling the work load associated with that choice, and would not place that work upon the district courts, county sheriffs, or any other office or agency.

Senate Judiciary

3-25-03

Attachment 3-1

HOUSE BILL No. 2133

By Committee on Corrections and Juvenile Justice

1-30

Section 1. K.S.A. 12-4104 is hereby amended to read as follows:

Section 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court.

(b) *The municipal court of each city of the first class may exercise jurisdiction to enforce all debts owed to the court utilizing the civil remedies and procedures found in article 20 of chapter 61 of the Kansas Statutes Annotated.*

Section 2. K.S.A. 12-4106 is hereby amended to read as follows:

12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt committed in court or for failure to obey process issued by such municipal judge, in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; ~~and~~ discharge accused persons; , *and*

enforce debts owed to the court as authorized by this act.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas Bureau of Investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

Section 3. K.S.A. 12-4108 is hereby amended to read as follows:

12-4108. (a) The governing body of each city may provide for the office of clerk of the municipal court. The municipal judge shall appoint such clerk or if no clerk is provided for, the judge shall also serve as clerk. The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court. The clerk shall receive, account for and pay to the city treasurer monthly all fines and forfeited bonds paid into the court.

(b) The clerk of the municipal court, or the municipal judge if no clerk is appointed, within 10 days after selection, and before entering upon the duties of office, shall execute to the city such bond as the governing body may require, which shall be approved by the governing body, and filed in the office of the city clerk, conditioned for the faithful performance of the duties required of such clerk by law, and for the faithful application and payment of all moneys that may come into such clerk's hands in the execution of the duties of the office. The city shall pay the cost of such bond.

(b)(c) The clerk of the municipal court is authorized to enter into contracts in accordance with this section for collection services for debts owed to the court or restitution owed under an order of restitution. The cost of collections shall be paid by the defendant as an additional court cost in all criminal and traffic cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay the court a debt or restitution. Any fine, penalty, or any part of any fine or penalty assessed by a municipal court which remains unpaid shall be a debt due and owing to the municipality and, as such, may be collected in accordance with applicable law. Such debts shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.

(e) (d) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection as provided in this section, and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected,

but shall not be deducted from the debts owed to courts or restitution.

~~(d)~~(e) On and after July 1, 2003, any city of the first class is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

~~(e)~~(f) Contracts entered as provided in this section shall provide for the payment of any amounts collected to the clerk of the municipal court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the municipal court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

~~(f)~~(g) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute amounts collected as provided in this section as follows: (1) **When collection services are utilized pursuant to subsection (b), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt; or**

(2) **when collection services are utilized pursuant to subsection (d), all amounts shall be paid to the beneficiary under an order of restitution designated to receive such restitution, except that where the beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and amendments thereto, all amounts shall be paid to the board until the board's subrogation lien is satisfied.**

~~(g)~~(h) Whenever collection services are being utilized against the same debtor

pursuant to both subparagraphs (g)(1) and (g)(2), any amounts collected by a any contracting agent shall be first applied to satisfy debts owed to the court as provided under subsection (g)(1). Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy debts owed to pursuant to an order of restitution as provided under subsection (g)(2).

~~**(h)(i) Any collection for debt or restitution may be enforced pursuant to the code of civil procedure for limited actions.**~~

(i) The collection services authorized by this section shall not be utilized until the debt or restitution remains unpaid for more than 180 45 days.

Section 4. K.S.A. 12-4109 is hereby amended to read as follows:

12-4109. Each city shall provide at the expense of the city a suitable courtroom for the municipal court, together with all necessary supplies and records. Municipal court shall be held at such time and places designated by ordinance. *If the court of any city of the first class elects to utilize the civil procedure and remedies authorized by this act for collection of debts owed to the court, a record of such proceedings shall be maintained.*

Section 5. K.S.A. 12-4112 is hereby amended to read as follows:

12-4112. No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-4411 and any amendments thereto, for the assessment required by K.S.A. 41-4116 for the training, testing and continuing judicial education of municipal judges-, *court costs created under city home rule authority, and assessments for debts owed to the court.*

Section 6. K.S.A. 12-4113 is hereby amended to read as follows:

12-4113. (a) "Appearance bond" means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.

(b) "Accused person" means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.

(c) "Arraignment" means the formal act of calling the person accused of violating an ordinance before the municipal court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose sentence.

(d) "Arrest" means the taking of a person into custody in order that the person will appear to answer for the violation of an ordinance. The giving of a notice to appear is not an arrest.

(e) "Bail" is the security given for the purpose of insuring compliance with the terms of an appearance bond.

(f) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a municipal court has ordered restitution be paid.

~~(f)~~(g) "City attorney" means any attorney who represents the city in the prosecution of an accused person for the violation of a city ordinance.

~~(g)~~ (h) "Complaint" means a sworn written statement, or a written statement by a

law enforcement officer, of the essential facts constituting a violation of an ordinance

(i) *“Contracting agent” means a person, firm, agency or other entity who contracts as provided in this act to provide collection services.*

(j) *“Cost of collection” means the fee specified in contracts as provided in this act to be paid to or retained by a contracting agent for collection services. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto, or administrative costs prescribed by the clerk of the municipal court.*

(h)(k) *“Custody” means the restraint of a person pursuant to an arrest.*

(l) *“Debts owed to the court” means any assessment of court costs, fines, fees or moneys expended by the municipality in providing counsel and other defense services to indigent defendants or other charges which a municipal court judge has ordered to be paid to the court, and which remain unpaid in whole or in part. Such debts include any interest or penalties on such unpaid amounts as provided for in the judgment or by law and the cost of collection when collection services of a contracting agent as provided in this section are utilized.*

(±)(m) *“Detention” means the temporary restraint of a person by a law enforcement officer.*

(⊕)(n) *“Law enforcement officer” means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof.*

(⊕)(o) *“Notice to appear” is a written notice to a person accused by a complaint of having violated an ordinance of a city to appear at a stated time and place to answer to the*

charge of the complaint.

(~~h~~)(p) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(~~m~~)(q) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or requires the same behavior as that proscribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118 and amendments thereto.

(~~n~~)(r) "Warrant" is a written order made by a municipal judge directed to any law enforcement officer commanding the officer to arrest the person named or described in it.

(~~o~~)(s) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.

Section 7. K.S.A. 12-4601 is hereby amended to read as follows:

12-4601. (a) An appeal may be taken *from a conviction of a municipal ordinance*

to the district court in the county in which said municipal court is located:

- (a) By the accused person in all cases; and
- (b) By the city upon questions of law.

The appeal shall stay all further proceedings upon the judgment appealed from.

(b) *An appeal may be taken from the civil remedies utilized by the municipal court to collect debts owed to the court to the district court in the county in which said municipal court is located as provided in Article 21 of Chapter 61 of the Kansas Statutes Annotated. For purposes of such appeal, the municipal court judgment shall be considered to be a judgment by a district magistrate judge.*

Section 8. The provisions of this act shall be part of and supplemental to the Kansas Code of Procedure for municipal courts.

Section 9. K.S.A. 12-4104, 12-4106, 12-4108, 12-4109, 12-4112, 12-4113 and 12-4601 are hereby repealed.

Section 10. This act shall take effect and be in force from and after its publication in the statute book.