

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on March 10, 2005 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Carol Doel, Committee Secretary

Conferees:

Mary Torrence, Senior Assistant Revisor of Statutes

Others attending:

See attached list

Chairman Edmonds opened the meeting for bill introductions. There were none and the attention of the committee was turned to **HB 2309** a bill dealing with code enforcement in Douglas County.

Representative Burroughs was recognized and stated that he understood some of the smaller communities wouldn't mind having the opportunity to be included in **HB 2309**. The fact that there was a 100,000 limitation was a concern. The bill doesn't mandate that a code court would have to be established, it is only if the county would chose to do so and he wished to have this clarified by staff.

Mary Torrence from the Office of the Revisor stated that the bill does not mandate that a code court would have to be established.

Representative Burroughs made a conceptual motion that the 100,000 criteria be eliminated. Representative Mah seconded the motion. Vote was taken. Motion passed.

With **HB 2039** amended to include all 105 counties, Chairman Edmonds asked the pleasure of the committee.

Representative Burroughs moved that **HB 2309** be moved out favorably for passage as amended. Representative Mah seconded the motion.

A memo from Athena Andaya, Research Analyst was presented after Representative Mah was recognized with a question regarding when the district court is actually involved. Athena addressed her memo giving the background of **HB 2309** and the answer previously asked questions regarding the county code court, how the revenue from fines was distributed, who pays for the costs of code enforcement, and how judges are appointed and compensated. (Attachment 1)

Representative Mah made a substitute motion to reconsider the previous amendment to the bill. The substitute motion was seconded by Representative Ruff. Vote was taken. The substitute motion failed.

No one wish to be recorded.

The Chair returned to the underlying motion which was a motion made by Representative Burroughs to recommend **HB 2309** as amended favorable for passage.

Representative Dahl made a substitute motion that says with the approval of the people, the county commissioners can establish the county courts. Representative Huy seconded the motion. Vote was taken. Motion failed.

Again, The Chair returned attention to the underlying motion by Representative Burroughs to recommend **HB 2309** as amended favorable for passage. Vote was taken. Motion passed.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 10, 2005 in Room 313-S of the Capitol.

Chairman Edmonds opened **SB 153** for discussion. This is a bill concerning state-tribal gaming compacts; procedure for approval when legislature not in session.

Representative Siegfroid made a motion to discard the current language of **SB 153** and replace it with the contents of **HB 2479**. The motion was seconded by Representative Brunk. Vote was taken. Motion passed.

Representative Siegfroid made a motion to move House substitute for **SB 153** out favorably as amended. Representative Wilk seconded the motion. Vote taken. Motion passed.

The Chair opened **HB 2300** for consideration.

Representative Brunk moved that **HB 2300** be moved out favorable for passage. Representative Kinzer seconded the motion.

Representative Loganbill made a substitute motion to replace the word conception in lines 17 and 18 of **HB 2300** with the work implantation. Representative Mah seconded the motion. Vote was taken. Motion failed.

Attention was turned to the base motion by Representative Brunk.

Representative Mah called attention to some research that Mary Torrence, Senior Assistant Revisor of Statues, did for her regarding **HB 2300**. This research was a list of crimes that a person might be prosecuted for if an unborn child is defined as a person for purposes of the Kansas Criminal Code. (Attachment 2)

Representative Mah offered a substitute motion to amend **HB 2300** line 20 from conception to the point of viability. The motion was seconded by Representative Loganbill. Vote was taken. Motion failed.

Representative Mah wished to be recorded as voting yes.

Chairman Edmonds returned to the original motion by Representative Brunk.

Mary Torrence from the Office of the Revisor was asked to read the Federal definition of an unborn child.

Taken from the One Hundred Eight Congress of the United State of America on the 20<sup>th</sup> day of January, 2004 the unborn child is described as:

“(d) As used in this section, the term ‘unborn child’ means a child in utero , and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any state of development, who is carried in the womb.” (Attachment 3)

Representative Burroughs made a substitute motion to strike lines 19 and 20 of **HB 2300** and use the federal language of unborn child. Representative Ruff seconded the motion. Vote was taken on the substitute motion. Motion failed.

Representative Burroughs wished to be recorded as voting yes.

Chairman Edmonds returned to the original motion for discussion.

Representative Brunk made a motion to pass **HB 2300** favorable for passage with a second by Representative Kinzer. Vote was taken. Motion passed.

No one wished their vote recorded.

With no further business before the committee, the meeting was adjourned.



# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 25, 2005

**To:** Chairman John Edmonds and Members of the House Committee  
on Federal and State Affairs

**From:** Athena Andaya, Research Analyst

**Re:** HB 2309 – Enforcement of Codes and Resolutions in Counties  
with Populations in Excess of 100,000

## Background

HB 2309 would allow cities with a population of more than 100,000 to establish a separate court docket to resolve violations of the county code or resolutions. Current statute allows cities with a population of more than 150,000 to establish such a docket. Several questions remained unanswered after the public hearing on HB 2309. Staff was asked to research the questions and provide a summary for the Committee's review.

## Questions

- 1. Is a County Code Court a Court of Record?** No. Hearings on the enforcement of the county code are not in a court of record. These hearings are similar to city code violations heard in municipal court. If the defendant is dissatisfied with the outcome at the code court level, he or she must appeal to the district court for a new trial. See KSA 19-4737.
- 2. How Is the Revenue from Fines and Penalties Distributed?** The distribution of a fine and penalty depends upon whether the county has a separate court docket for code enforcement pursuant to KSA 19-101d. If the violation is prosecuted under subsection (b) of KSA 19-101d, *i.e.*, in a county with a separate code enforcement docket, the fine and penalty are remitted to the county general fund. See KSA 19-101e. If the violation is prosecuted in the district court under subsection (a) of KSA 19-101d, *i.e.*, in a county without a separate code enforcement docket, the fine and penalty are remitted to the State Treasurer for deposit in the State General Fund. See KSA 19-101e.
- 3. Who Pays For the Costs of Code Enforcement?** KSA 19-101d provides that all costs for the enforcement and prosecution of violations of county codes and resolutions, except for compensation of the district judge, shall be paid by the county. The boards of county commissioners are authorized to levy a tax not to exceed one-half mill upon all taxable tangible property within the county to pay for the costs of code enforcement.

It should be noted that KSA 19-101e and KSA 19-4707 authorize the court to assess an additional court cost of \$20 for each violation of a resolution, with \$2 of the \$20 being remitted to the State Treasurer. The State Treasurer shall deposit the \$2 in the state treasury and credit \$1 to the Protection from Abuse Fund and \$1 to the Crime Victims' Assistance Fund. The remaining \$18 is remitted to the county general fund.

FEDERAL AND STATE AFFAIRS

Date 3-10-05

Attachment 1

4. **How Are Judges Appointed and Compensated?** A district court judge or a judge pro tem (a judge who serves on a temporary basis) is designated by the chief judge of the district. See KSA 19-4705. The district court judge will receive no additional compensation for presiding over a county code matter. The pro tem judge, however, will be compensated per the resolution of the board of county commissioners and paid from revenues of the county general fund. See KSA 19-4705.

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**MEMORANDUM**

**To:** Representative Ann Mah  
**From:** Mary Torrence, Senior Assistant Revisor of Statutes  
**Date:** March 7, 2005  
**Subject:** House Bill No. 2300



The following is a list of crimes that a person might be prosecuted for if an unborn child is defined as a person for purposes of the Kansas Criminal Code. The elements of the crime are listed for each crime and actual or possible factual situations are described in brackets.

First degree murder (K.S.A. 21-3402)

- premeditated
- in commission of inherently dangerous felony [driver of getaway car could be charged if hit another car, causing pregnant driver to miscarry]

Second degree murder (K.S.A. 2004 Supp. 21-3402)

- intentional
- unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life (“depraved heart”) [defendant’s dogs killed person (State v. Davidson, 1999)] [intoxicated defendant hit two parked cars before causing fatal collision while speeding; failed to render aid to the victims and fled the scene (State v. Doub, 2004)]

Involuntary manslaughter (K.S.A. 2004 Supp. 21-3404)

- unintentional reckless [epileptic with record of previous accidents had accident killing person (State v. Jenkins, 2002)]
- unintentional in commission of felony or misdemeanor enacted to protect human life or safety [this might apply to a person under 21 years old who has a fatal accident while blood alcohol is over .02]
- unintentional in commission of lawful act in unlawful manner [this might apply to a person under 21 years old who has a fatal accident while blood alcohol is over .02]

Vehicular homicide (K.S.A. 21-3405)

- unintentional killing by operation of vehicle, etc., in manner creating unreasonable risk of injury and deviating materially from reasonable person’s standard of care [law enforcement officer pursuing defendant killed person in collision (State v. Anderson, 2000)] [driver of car could be charged if had a collision which caused passenger to miscarry]

FEDERAL AND STATE AFFAIRS

Date 3-10-05

Attachment 2

Involuntary manslaughter while DUI (K.S.A. 2004 Supp. 21-3442)

- unintentional killing committed in the commission of DUI

Abandonment of a child (K.S.A. 2004 Supp. 21-3604)

- leaving child in place where may suffer neglect [could father be charged if he leaves mother, knowing she drinks or uses drugs?]

Endangering a child (K.S.A. 21-3608)

- intentionally and unreasonably causing or permitting child to be placed in a situation where life, body or health may be injured or endangered [same question as above]

Aggravated endangering a child (K.S.A. Supp. 21-3408a)

- intentionally and unreasonably causing or permitting child to be placed in a situation where life, body or health is injured or endangered [same question as above]
- permitting child to be in environment where amphetamines are sold, offered for sale or possessed with intent to sell [same question as above]
- permitting child to be in environment where chemicals for the manufacture of amphetamines are stored [same question as above]

Furnishing alcoholic liquor or cereal malt beverage to a minor (K.S.A. 2004 Supp. 21-3610)

- directly or indirectly buying for or selling, giving or furnishing to a minor any alcoholic liquor or CMB [could person supplying alcoholic liquor or CMB to mother be charged?]



One Hundred Eighth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,  
the twentieth day of January, two thousand and four*

An Act

To amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Unborn Victims of Violence Act of 2004" or "Laci and Conner's Law".

**SEC. 2. PROTECTION OF UNBORN CHILDREN.**

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

**"CHAPTER 90A—PROTECTION OF UNBORN CHILDREN**

"Sec.  
"1841. Protection of unborn children.

**"§ 1841. Protection of unborn children**

"(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

"(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

"(B) An offense under this section does not require proof that—

"(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

"(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

"(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are the following:

"(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 924(j),



930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

“(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

“(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) As used in this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item:

“90A. Protection of unborn children ..... 1841”.

### SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

#### “§ 919a. Art. 119a. Death or injury of an unborn child

“(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child’s mother.

“(2) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

“(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

“(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

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“(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) In this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 919 the following new item:

“919a. 119a. Death or injury of an unborn child.”

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*