Approved: May 3, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on March 1, 2006, in Room 123-S of the Capitol.

All members were present except:
David Haley- excused
Kay O'Connor arrived, 9:42 a.m.
Dwayne Umbarger arrived, 9:47 a.m.

Committee staff present:
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Senator Phil Journey
Nancy Strouse, Kansas Judicial Council
James W. Clark, Kansas Bar Association
Mike Jennings, Kansas County and District Attorneys Association

Others attending:
See attached list.

The hearing on **SB 400--Adoption; assertion of parental rights more than 60 days after finalized adoption; court consideration** was opened.

Senator Journey appeared as a proponent and provided background on the bill (Attachment 1). Senator Journey stated that the best interest of a child should be paramount in determining whether parental rights should be reinstated.

There being no further conferees, the hearing on **SB 400** was closed.

The hearing on **HB 2610--Civil procedure; service outside the state; submitting to jurisdiction** was opened.

Nancy Strouse, a proponent, reported on the study conducted by the Judicial Council (Attachment 2).

Jim Clark spoke in support and agreed with the testimony of Nancy Stross (Attachment 3).

There being no further conferees, the hearing on **HB 2610** was closed.

The hearing on **HB 2616--State may request a preliminary examination on a felony charge** was opened.

Mike Jennings appeared as a proponent indicating the benefits regarding preservation of testimony and reduction of witness anxiety in testifying at preliminary hearings rather than trials (Attachment 4).

There being no further conferees, the hearing on **HB 2616** was closed.

The hearing on **HB 2617--Violation of a protective order includes an order issued in a criminal case ordering the defendant to refrain from having contact with another person** was opened.

Mike Jennings spoke as a proponent which would clarify the law regarding protective orders (Attachment 5).

Written testimony in support of **HB 2617** was submitted by:
Kevin A. Graham, Assistant Attorney General, Office of the Attorney General (Attachment 6)

There being no further conferees, the hearing on **HB 2617** was closed.

The meeting adjourned at 10:02 a.m. The next scheduled meeting is March 2, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-1-06

NAME	REPRESENTING
Mark Gleeson	Judicial Branch
Estelle Montgomery	Heim Law Firm
Jeanne Goodwin	City of Wichita
Nancy Strause	Judicial Council
Judy M. Nearnell	Judicial Council
JIM CLARK	KBA
Michael White	KCDAA
Mike Jennings	KCDAA

STATE OF KANSAS

SENATOR PHILLIP B. JOURNEY
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: SPECIAL CLAIMS AGAINST THE STATE (JOINT), CHAIR .
HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

Testimony in Support of Senate Bill #400
Before the Senate Judiciary Committee
Presented on March 1st, 2006

I want to thank the Chairman and the members of the Committee for the opportunity to testify in support of Senate Bill #400. Senate Bill #400 is a simple piece of legislation designed to respond to situations we see arising more frequently regarding adoption cases in the state of Kansas.

Senate Bill #400 amends KSA 59-2136. When a father or alleged father appears and asserts parental rights more than 60 days after the adoption is finalized, the court shall consider the best interests of the child in determining whether parental rights should be reinstated. The fact pattern we see arising now more frequently than in the past seems to follow along these lines that the mother for whatever reason breaks up with the father of the child, the father may not be aware that she is pregnant or may have been falsely informed that the intent of the mother to have an abortion. The mother then falsely tells the attorney supervising the adoption that she either doesn't know who the father is or doesn't know where he is, and no notice is given. At some point in the future the father discovers that the child was actually born and attempts to reestablish his parental rights subsequent to finalization of the adoption, one, two, or even more years after the adoption is finalized. Of course under current law, the main consideration of the court is whether he was given appropriate notice of the adoption and the opportunity to be heard and assert his parental rights prior to the finalization of the adoption.

Current law in this fact pattern leads to the unfortunate situation of a child possibly knowing no other parent other than their adoptive parents being removed from their family years after the adoption is final after the bonds of the parent/child relationship have been firmly established wrenching the child from their adoptive family and placing them with basically someone while biologically the parent little more than a stranger.

The intention of this modification of KSA 59-2136 is to support the rights of the child and to direct the court to find what is in the child's best interest once that emotional bond has been created.

I appreciate the committee's time and consideration and leadership's accommodation of my request for a hearing and preserving this legislation after Turn-Around. I want to thank the

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committee and request that the committee forward the bill out favorably.

Respectfully submitted,

Senator Phillip B. Journey
26th District

MEMORANDUM

TO: **Senator John Vratil**

FROM: **Nancy J. Strouse**
Kansas Judicial Council

DATE: **March 1, 2006**

SUBJECT: **HB 2610 - Source of phrase "substantial, systematic and continuous"**

When I appeared before the Senate Judiciary Committee this morning as a proponent of 2006 HB 2610, you asked me to determine the origin of the language "substantial, systematic and continuous" that is set forth in the proposed amendment to K.S.A. 60-308(b)(2).

This language was inserted by the House Judiciary Committee and was not contained in the original bill proposed by the Judicial Council Civil Code Advisory Committee. Prof. Robert Casad used the phrase several times in his oral testimony before the House Judiciary Committee, and Chairman O'Neal proposed that the phrase be amended into the bill.

The original source of the "systematic and continuous" language is the U.S. Supreme Court case *International Shoe Co. v. Washington*, 326 U.S. 310, 90 L.Ed 95, 66 S.Ct. 154(1945). In that case, the Court described the activities of the appellant in the State of Washington as "systematic and continuous throughout the years in question." *Id.*, 326 U.S. at 320. Analyzing the extent of a defendant's contact with a forum state became commonly known as the "systematic and continuous" test of *International Shoe*. The word "substantial" became connected with the "systematic and continuous" test of *International Shoe* because even systematic and continuous contacts must still be analyzed to determine if the contacts are "substantial" enough so that exercise of jurisdiction over the nonresident does not violate "our traditional conception of fair play and substantial justice." *Id.* There has not been a U.S. Supreme Court case in which the words "substantial, systematic and continuous" have been used, but there are innumerable such cases in lower federal courts and state courts. The first case that I find in which the phrase appears is *Scoville Manufacturing Company v. Dateline Electric Co., LTD.*, 319 F.Supp. 772 (N.D. Ill. 1970), but it has become widely used in jurisdiction cases.

You also asked if there had been any recent cases that had expanded the rules as set forth in *International Shoe*. My negative response may have been somewhat misleading. Of course, there have been many cases since *International Shoe* that have further clarified and applied the tests set forth in that case. There is still no bright line, so the cases are very fact specific. However, there was not a recent U.S. Supreme Court case that expanded the law and thus triggered the Civil Code Advisory Committee's submission of HB 2610. Prof. Casad brought the issue up in response to a recent unpublished Kansas Court of Appeals decision which states as follows:

> "The *Kluin* court noted the legislature *could* have, *but has not*, enacted a statute providing for general jurisdiction. 274 Kan. at 896. We must, therefore, hold that until and unless the legislature addresses the issue, Kansas does not recognize the concept of general jurisdiction." *Merriman v. Crompton Corp.*, No. 91,702, 113 P.3d 834 (Kan. App. 2d June 24, 2005) (citing *Kluin v. American Suzuki Motor Corp.*, 274 Kan. 888, 56 P.3d 829 (2002).

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JUDICIAL COUNCIL TESTIMONY
ON 2006 HB 2610

February 28, 2006

2006 HB 2610 is recommended by the Judicial Council Civil Code Advisory Committee whose members are: J. Nick Badgerow, Chair, Overland Park; Hon. Terry L. Bullock, Topeka; Prof. Robert C. Casad, Lawrence; Hon. Robert E. Davis, Topeka; Hon. Jerry G. Elliott, Topeka; Hon. Bruce T. Gatterman, Larned; Barry R. Grissom, Overland Park; Joseph W. Jeter, Hays; David M. Rapp, Wichita; Donald W. Vasos, Fairway; and Bruce Ward, Wichita.

The duties of the Civil Code Advisory Committee are to monitor and make recommendations to the civil code and related areas of law.

The proposed amendments to the long arm statute, K.S.A. 60-308, will amend the Code of Civil Procedure regarding jurisdiction over nonresidents by providing that a person is deemed to have submitted to the jurisdiction of Kansas courts if there is "substantial, continuous and systematic contact" with Kansas.

The amendment will for the first time allow Kansas courts to exercise personal jurisdiction to the full extent that the Constitution of the United States allows. Many other states have done this, including our neighbors, Oklahoma and Nebraska.

- Amendments to subsection (a)(1) better reflect what the long-arm statute was intended to do: to extend the basis for jurisdiction. The older language is confusing because, although referring to the basis for jurisdiction, it is using words that normally apply to the process of invoking it.

- The proposed amendments to K.S.A. 60-308 also address an anomaly that exists within the current statutory scheme. "General jurisdiction" over foreign corporations is allowed under K.S.A. 17-7301 and 17-7307(c). Jurisdiction over foreign insurance companies is allowed under K.S.A. 40-218. These are the "doing business" statutes, and they were on the books long before the long-arm statute was enacted. The reason for the confusion about the availability of general jurisdiction is that these statutes provide their own methods of service of process. They contemplate service of process in the state on a designated agent for the corporation. The methods of service of process in the state authorized under those statutes and service outside the state under K.S.A. 60-308 are not interchangeable. That means that in a given case the facts may support jurisdiction in Kansas, but if the wrong method of serving process is used, jurisdiction will fail. That does not make sense, and that problem will be corrected by the amendment, which would make general jurisdiction available under the long-arm statute as well as under the "doing business" statutes.

- New subsection (b)(2) will allow Kansas courts to exercise personal jurisdiction to the full extent that the United States Constitution allows. Such jurisdiction is available in a great many states, including our neighbors Nebraska and Oklahoma.

KANSAS BAR ASSOCIATION

Testimony in Support of

HOUSE BILL NO. 2610

James W. Clark, KBA Legislative Counsel

Presented to the Senate Judiciary Committee
March 1, 3006

The Kansas Bar Association appears as a proponent of **HB 2610**, a bill recommended by the Judicial Council, which attempts to clear up any ambiguity that the Kansas long arm statute, K.S.A. 60-308, establishes a general long arm jurisdiction statute applicable in all cases, in lieu of the various special statues that currently establish general jurisdiction only in limited kinds of cases.

After studying the statute, the Legislative Committee of the Kansas Bar Association came to the conclusion that long arm statutes general benefit Kansas litigants in their effort to establish jurisdiction over non-resident entities that have significant contact in Kansas. By broadening the reach of the statute and avoiding the confusion caused by many specialized statutes, the citizens of Kansas are benefited by the passing of HB **2610.** We therefore urge the Committee to report the bill favorably.

* * *

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3-1-06
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Kansas County & District Attorneys Association

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March 1, 2006

Chairman Vratil & Members of the Senate Judiciary Committee:

I appear before you today in support of House bill 2616. In my experience there is one constant in almost all criminal cases - witnesses and victims are anxious about testifying in court. Their anxieties come from many sources - a fear of the unknown, a fear of appearing in front of a group of strangers to discuss traumatic events, a fear of revealing intimate details of their life and a fear of what the experience will be like. Some witnesses fear retaliation for their testimony form gang members and other lawless elements. Others fear having to testify against loved ones or family members. In my experience the single greatest fear is having to confront the defendant in person in court. The combination of these fears make many witnesses reluctant to testify.

Most witnesses are reassured when they discover that their testimony will be taken in a courtroom, with all the legal and physical security that such a setting represents. Nonetheless, some witnesses do not appear to testify and, in fact, hide themselves so they do not have to testify.

In the past, there were legal remedies to deal with the situation where necessary witnesses failed to appear for court. In 1909, the Kansas Supreme Court ruled in a case called State v. Pigg, that the prosecution had the right., along with the defendant, to request a preliminary hearing. In this way testimony could be preserved and the was defendant given an opportunity to cross examine witnesses to protect the right to confrontation. In my personal experience the State would, on occasion, request that a preliminary hearing be held, even where the defendant wished to waive that hearing. .In addition, case law permitted certain kinds of hearsay testimony to be introduced at trial, if certain safeguards to establish the reliability of that statement could be met. In this way all appropriate testimony could be presented to the fact finder to be weighed in arriving at a verdict.

Both of these courses of action are now either no longer available or have been severely curtailed. In 1988 the Kansas Supreme Court held in State v. Trudell that the State had no right to a preliminary hearing under language of K.S.A. 22-2902. This was a ruling with little practical importance to prosecutors as witness' statements to law enforcement authorities could be introduced in the witness' absence provided certain safeguards could be established. Even so, many defense counsel have told me that it is their preference to waive preliminary hearings so that vital witnesses' testimony is not preserved.

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All this changed in March, 2004, when the United States Supreme Court, in a case called Crawford v. Washington, ruled that what it called "testimonial hearsay" was inadmissible. This label included virtually all statements made by victims and witnessers to police. An entire class of testimony which once was admissible in court was now excluded from court. The protection afforded to prosecution is gone.

The ruling did permit the admission of previous testimony, under oath, where the defendant had an opportunity for meaningful cross-examination. Testimony taken at a preliminary hearing is still admissible under this ruling.

The difficulty is, as noted above, the State has no right to a preliminary hearing to perpetuate testimony in a form that can be used at a later trial. All the State may do to attempt to perpetuate testimony is request permission to take a victim's or witness' deposition.

There are a number of factors in favor of permitting the State to request a preliminary hearing. All of the parties necessary are already present when a preliminary hearing is scheduled - the witnesses, the defense counsel, the defendant, the prosecuting attorney, the court reporter and the judge. There is no need to attempt to schedule all these parties at a later time or date at a deposition. The fears of witnesses and victims, addressed earlier, are greatly reduced when they testify at a regular court proceeding, with all the safeguards court proceedings provide. There is a great cost savings and time savings to the parties. It is very expensive anf time consuming to take and schedule depositions in criminal cases.

My experience has been that even when the prosecution had the right to request a preliminary hearing most such hearings were waived. Amending K.S.A. 22-2902 should not greatly increase the number of preliminary hearings. In those cases where the prosecution does request a preliminary hearing vital testimony will be preserved so that justice can be served.

Thank you for the opportunity to appear before you today.

Mike Jennings, KCDAA Legislative Chair
Sedgwick County Assistant District Attorney

Kansas County & District Attorneys Association

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March 1, 2006

Chairman Vratil & Members of the Senate Judiciary Committee:

HOUSE BILL 2617

When a suspect is brought before a Judge for his or her first appearance, the Judge sets a bond and any bond conditions that are appropriate, to include "no contact" with specific witnesses. For the suspect who makes bond and then initiates such prohibited contact, the current statute is adequate. For the suspect who goes so far as to take actions designed at "*preventing or dissuading*," a witness or victim from testifying, ***K.S.A. 21-3832***, Intimidation of a Witness, is available.

What about the suspect who has been issued a "no contact" order as a condition of bond which he or she cannot make, who continues to contact – and thereby influence – witnesses or victims from his or her jail cell? The current language of ***K.S.A. 21-3843,*** does not cover such situations.

HB 2617 as drafted proposed adding subsection 7 to remedy this situation:

7. "*an order issued in a criminal case that order the defendant to refrain from having any direct or indirect contact with another person.*"

The House committee amended the bill on page 1, line 27:

"or at any other time during the criminal case."

If added, the intent of either language would cover the following common situations:

a. The suspect who is unable to make bond and continues to have contact with

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witnesses or victims he/she which would be prohibited if they were out on bond. The only consequence to this behavior now comes is if it can be **proven** that such contact was intended to "prevent or dissuade" a witness or victim from testifying (see Intimidation of a Witness, ***K.S.A. 21-3832***) – which is often difficult if the contact in question had the intended consequence and the witness or victim is now unwilling to go to law enforcement.

b. Contact from jail with a witness or victim when said contact does not rise to the level of an overt attempt to "prevent or dissuade" that witness from testifying. In domestic violence cases, for instance, promises from the inmate that he will "change," may not be of a threatening nature, but the effect is the same–a reluctant witness who is no longer liable to appear for subsequent court dates.

This addition would also be of benefit to suspect in gang-related activities who may be in contact from their cell with fellow gang-members listed as witnesses to the offense. The witness in such a scenarios is highly unlikely to advise law enforcement of either fact or content of such contact. Knowing this, the inmate is free to ply the witness with threats, promises, or simply guilt to influence said witness. If contact alone is criminalized, law enforcement will be better equipped to stop this behavior.

In short, the proposed language would benefit any situation where a suspect has motive to influence a witness or victim. The more serious the charge, the higher the bond and, consequently, the greater the incarcerated suspect's motive to influence. The proposed language is necessary to combat this reality. The KCDAA would prefer the language offered in the original bill but would certainly stand in support of the House amended language if the Senate committee believes the intent of the amendment addresses the problem identified.

Mike Jennings, KCDAA Legislative Chair
Sedgwick County Assistant District Attorney

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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March 2, 2006

SENATE JUDICIARY COMMITTEE
Written testimony of Kevin A. Graham
in support of
House Bill No. 2617

Dear Chairman Vratil and Members of the Committee:

Thank you for allowing me to submit this written testimony on behalf of Attorney General Phill Kline in support of HB 2617, a bill designed to clarify the law regarding protective orders. HB 2617 would permit the prosecution of an offender for the crime of Violation of a Protective Order, KSA 21-3843, if at any time during the progress of a criminal case an offender violates an order from the court prohibiting the offender from having contact with another person.

While the current statutory language of K.S.A. 2005 Supp. 21-3843 does cover most cases, situations may arise where the current statutory language could possibly be interpreted not to apply.

Example: An offender is arrested for domestic battery and released on bond. The offender's bond contains a "no contact with the victim" condition of the bond. Several days go by between the date of the arrest and the date that formal charges are filed by the prosecutor. During the time between when the offender is released on bond - but before the formal charges are filed - the offender violates the bond and goes to the victim's house and confronts the victim. Cleary the offender has violated the bond and the bond may be revoked, but under the current statutory language is not entirely clear whether the offender could be prosecuted under the Violation of a Protective Order statute.

Example: An offender is arrested on a criminal case and incarcerated. Either prior to trial or post-trial the incarcerated offender engages in telephone calls to a witness or victim that the offender has been ordered not to contact. The current statutory language is not clear as to whether that offender – because he/she is incarcerated – may be prosecuted under the Violation of a Protective Order statute.

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HB 2617 would clarify the law to provide that if a person violates an order of a court issued *"at any other time during the criminal case"* ordering the person to refrain from having any direct or indirect contact with another person then that person could be prosecuted under K.S.A. 21-3843 for Violation of a Protective Order.

On behalf of Attorney General Kline, I encourage the committee to recommend HB 2617 favorably for passage.

Respectfully,
OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Kevin A. Graham
Assistant Attorney General
Director of Legislative Affairs