

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 21, 2005 in Room 313-S of the Capitol.

All members were present except:

Dean Newton- excused
Michael Peterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Professor Rick Levy, Kansas Judicial Council, Juvenile Offender & Child in Need of Care
Advisory Committee

The hearing on **HB 2457 - civil procedure; services of process, by delivery with return receipt**, was opened.

Randy Hearrell, Kansas Judicial Council, appeared as the sponsor of the proposed bill which would make a small correction to the civil code. In 2000, "service by return receipt delivery" replaced "use of certified mail" and now the U.S. Postal Service is using a new term "service by delivery with return receipt", which should be used to replace "service by return receipt delivery"(Attachment 1).

The hearing on **HB 2457** was closed.

HB 2352 - revised Kansas Code for Care of Children

Professor Rick Levy, Kansas Judicial Council, provided the committee with a handout that addressed some of the issues the committee discussed in the hearing and made some proposed amendments (Attachment 2).

1. Amend Section 1 to include in the provision language to ensure that children of parents with disabilities are not improperly removed from the home.
2. Addressing the concern with the definition of "reasonable efforts". It was found that the term derives from longstanding federal law and any change in that definition could jeopardize federal funding for the state.
3. The reference in Section 5 (c) should actually be referencing subsection (d).
4. Amend Section 38(g)(2) line 27 on page 32 should read "(2) If the secretary....."
5. Section 42 addresses who can attend hearings. The Advisory Committee had serious concerns as to who can attend hearings and they decided to leave the dispositional hearing closed and to allow the court discretionary authority to leave the adjudication hearing closed or opened.
6. A technical correction is also needed on page 34, lines 35-38. It should read "(b) Disposition. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to persons except **the parties**, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate, and the custodian."
7. Amend Section 62 to expand the notice provisions to balance the interests of the parents and the interest of children. The compromise would provide greater protection to parents while minimizing the delay in moving towards termination.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 21, 2005 in Room 313-S of the Capitol.

Representative Jack made the motion to report **HB 2352** favorably for passage. Representative Colloton seconded the motion.

Representative Jack made a substitute motion to amend Section 1 to include in the provision language to ensure that children of parents with disabilities are not improperly removed from the home. Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to change the reference in Section 5 (c) to subsection (d). Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to amend Section 38(g)(2) line 27 on page 32 by inserting "If" after (2) and before "the". Representative Loyd seconded the motion. The motion carried.

Representative Loyd made the motion to adopt the a technical correction on page 34, lines 35-38. It should read "(b) Disposition. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to persons except **the parties**, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate, and the custodian." Representative Owens seconded the motion. The motion carried.

Chairman announced Professor Levy suggested a compromise amendment in Section 62 to expand the notice provisions to balance the interests of the parents and the interest of the children. Representative Ward didn't care for the compromise because it is truly important for parents to receive several notices of termination.

Representative Kiegerl made the motion to adopt the following proposed amendment:

- give foster parents legal standing in the case unless it's not in the best interest of the child
- allow for judicial review in permanent placement
- knowingly false reporting would be held in civil action

Chairman O'Neal announced that the motion would be divided into three parts.

Part 1 - giving foster parents legal standing. Representative Kinzer seconded the motion. Chairman O'Neal pointed out that the language on page 29, lines 3-9 comes pretty close to what he was asking and possibly would make it easier for a foster parent. The foster parent would simply have to reside with the child for a period of six months and then ask the court to have legal standing. With permission of the second, Representative Kiegerl withdrew his motion.

Part 2 - judicial review, the motion was seconded. Professor Levy informed the committee that under current law courts have "veto power" over pre-termination of parental rights of a child. However, if we apply "veto power" when parental rights have been terminated it could jeopardize federal funds. Representative Pauls commented that the courts jurisdiction is opened until an adoption is closed. With permission of the second, Representative Kiegerl withdrew his motion.

Part 3 - insert knowingly false reporting language on page 18, following line 12. Representative Watkins seconded the motion. Staff warned the committee that amendment could apply to any false accusation in any proceeding.

The motion was divided:

a. include subsection (h) of **HB 2456** to make willfully & knowingly making a false report a class B misdemeanor. Representative Jack was concerned that this would cause people who are thinking about reporting not to because they do not know for sure if the act has actually happened. The motion failed 6-7.

b. amend in subsection (i) of **HB 2456** to allow for the court to impose a fine not to exceed \$5,000 and any reasonable attorney fees for making false accusations that they knew were false at the time the accusation was made. The motion failed.

CONTINUATION SHEET

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Representative Ward provided the committee with a balloon (Attachment 3). Chairman O'Neal announced that the committee would take each proposed amendment in the balloon separately.

Representative Ward made the motion to include a definition of "Reasonable efforts". Representative Kinzer seconded the motion. Representative Jack pointed out that the term "reasonable efforts" are used in two different contexts in the bill; "reasonable efforts" for notice and "reasonable efforts" removing a child from custody of it's parents. Representative Ward said that the "service language" would need to be changed to "due diligence".

Chairman O'Neal suggested that Representative Ward & Professor Levy get together and review the balloon and be ready to work the amendments tomorrow.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for February 22, 2005 at 3:30 p.m. in room 313-S.