

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, February 16, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Barbara Allen (E)
Senator Lana Oleen (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Mary Jo Grant, Outreach Ministry to Survivors of Childhood Sexual Abuse of the First United Methodist Church, El Dorado, Ks.
Arlis-Marie Gillcrest, Survivor, Park City, Ks.
Iris Lawrence, Survivor, El Dorado, Ks.
Mike Farmer, Kansas Catholic Conference
John Jurcyk, Jr., Attorney for Roman Catholic Archdiocese of Kansas City, Ks.
Woody Moses, Kansas Aggregate Producers Association and Kansas Ready Mixed Concrete Assn.
Leslie Coffman, Kansas Cooperative Council
Kim Alan Brnes, Pawnee County Coop Association
Kathy Porter, Office of Judicial Administration
Kansas District Judges Association
Doug Smith, Kansas Collectors Association and Kansas Credit Attorneys Association

Others attending: See attached list.

SB 436 - Statute of limitations on childhood sexual abuse extended to 30 years

Chairman Vratil opened the hearing on **SB 436**, and explained the proposed legislation. Mary Jo Grant testified on behalf of the Outreach Ministry to Survivors of Childhood Sexual Abuse of the First United Methodist Church, El Dorado, in support of **SB 436**. She said her organization had researched Statutes of Limitations for childhood sexual abuse for many other states, and found that many states have made improvements in their statutes in the last few years, i.e. Illinois, Arizona, Washington, Colorado, and Connecticut. (Attachment 1)

Mrs. Grant stated that the current Kansas Statute K.S.A. 60-523 (which provides three (3) years to bring an action after the victim turns 18) has a proviso in Paragraph (a) which is designed to provide legal redress for victims of abuse; however, it needs to be revised because it excludes a sizeable number of persons that it is meant to protect. She said her organization was suggesting a change from an initial limitation of three (3) years to 30 years. She stressed several key points to support the requested change which are outlined in detail in her written testimony. One point Mrs. Grant made was that young victims are so traumatized that they cope by forgetting or dissociating or repressing memories of the trauma which do not surface until something triggers the memories and they surface much later in life, typically by ages 30 or 40. She added that almost all victims develop Post Traumatic Stress Disorder (PTSD).

Mrs. Grant introduced the other members of her committee. They included Rev. David Weigle; Jack Dixon, a St. Paul Seminary student; Arlis-Marie Gillcrest, survivor and former multiple personality disorder and now integrated; Iris Lawrence, a survivor from El Dorado; and Ervin Grant, volunteer legal advisor. Ms. Gillcrest spoke briefly about her case history and medical treatments as a victim of child abuse perpetrated by her father. Ms. Iris Lawrence, survivor from El Dorado, expressed her appreciation to the Committee for all it does to help the citizens of Kansas. She gave a prepared statement in support of **SB 436**.

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Committee discussion and questions followed which included some testimonial experiences of survivors. Senator O'Connor questioned whether there had been any inquiries from insurance companies as to what would happen to the premiums for liability insurance if the legislature passed **SB 436**.

Mike Farmer, Kansas Catholic Conference, testified in opposition to **SB 436**. He related that the statutes of limitations exist in order to balance the rights of the victim and the accused. He said they exist because the truth is more difficult to determine as time passes and recollections fade. He explained that the vast majority of cases brought forth involving child sexual abuse by the clergy occurred in excess of 20 years ago, at a time when psychiatry, law and medicine believed that child sexual abuse was a moral lapse, rather than an incurable disease. He concluded that the proposed bill does not appear to increase protection so much as it unduly expands the liability of institutions, school districts, churches, and the many public and private entities that serve children and vulnerable adults. (Attachment 2)

John Jurcyk, Jr., Attorney for the Roman Catholic Archdiocese of Kansas City in Kansas, testified in opposition to **SB 436**. He stated that sexual abuse is not a Catholic Church problem; it is a societal problem. He said statistical evidence supports that 90% of child sexual abuse is committed by parents or relatives. He talked about Statutes of Limitations being deadlines intended to promote the timely and efficient litigation of claims. He explained the Kansas Statute of Limitations for contract cases is five years and two years for tort actions, and current KSA 60-523 provides for a greater period of time in cases of childhood sexual abuse to a minor.

Mr. Jurcyk was concerned that a 30-year time limit could create unforeseen consequences, and he gave several examples as outlined in his written testimony. He said by extending the statute, Kansas courts could be deluged with a torrent of cases, some of which may be meritorious, and some not. However, Mr. Jurcyk stated the policy of the State of Kansas is that stale claims should not be pursued. He concluded by saying that the court system is backlogged under the current Statute of Limitations, and KSA 60-523 is not broken and does not need fixing. He added that the amendments to KSA 60-523 are not fair and do not afford due process to all concerned. (Attachment 3)

Following brief discussion, the Chairman closed the hearing on **SB 436**.

SB 437 - Raising small claims limitation to \$5,000, with an increase every 3 years based on the consumer price index

Chairman Vratil opened the hearing on **SB 437**. Woody Moses, Kansas Aggregate Producers Association and Kansas Ready Mixed Concrete Association, testified in support of the proposed legislation. He said the members of the Association routinely used the Small Claims Act since its inception in 1973, and in the past it has been a valuable tool. In recent years its value has been reduced because the claim limit has remained at \$1,800 since 1994. He stated the current legal limitations prevents access in two ways: (1) It limits the number of eligible claims; and (2) the availability of legal counsel willing to accept cases of low value is limited. (Attachment 4)

Mr. Moses explained that if **SB 437** were enacted, it would raise the statutory limit in small claims actions from the current \$1,800 to \$5,000 with an increase every three years based on the Consumer Price Index (CPI).

Committee questions and discussion followed. Senator Donovan stated the bill would greatly benefit small businesses because they would not have to go to court saving them time and expense. Mr. Moses agreed.

Senator O'Connor asked if the decision to change from \$1,800 to \$5,000 was based on the CPI. Mr. Moses responded that \$5,000 is approximately the CPI, and his association did not come up with that figure. Chairman Vratil clarified that the bill was introduced by the Committee and not Mr. Moses.

Leslie Coffman, representing the Kansas Cooperative Council, testified in support of **SB 437**. She stated there was a growing interest within the Coop Council's membership to increase the dollar amount for which remedy can be sought in small claims court, and to increase the number of claims per year one can file in that court. She attached copies of two emails to her written testimony illustrating the need for

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many cooperatives to have increased access to small claims court for amounts larger than the current \$1,800 limit. (Attachment 5)

Kim Alan Barnes, Pawnee County Coop Association, Larned, Ks., submitted written testimony in support of **SB 437**. (Attachment 6)

Kathy Porter, Office of Judicial Administration (OJA), testified in opposition to **SB 437**. She stated OJA requested deletion of the provision allowing for an adjustment of the small claims jurisdictional limitation every three years based on the average increase in the CPI for the previous three years. OJA was concerned the clerks of the District Court would spend a great deal of time answering questions from the public. With the change, clerks would not be able to refer the public to a statute, but would have to refer the public to both a statute and a memorandum from the Judicial Administrator. Ms. Porter requested that if the provision remains in **SB 437**, the date for the CPI adjustment be amended to read, "On July 1, 2007, and every three years thereafter." She explained that the CPI for calendar year 2006 would not be available on January 1, 2007, and at the July date it would be plus the State of Kansas runs on a fiscal year basis. (Attachment 7)

Written testimony in opposition to **SB 437** was submitted by the Kansas District Judges Association. (Attachment 8)

Doug Smith, representing the Kansas Collectors Association and Kansas Credit Attorneys Association, submitted written testimony in opposition to **SB 437**.

Following brief Committee discussion and questions, the Chairman closed the hearing on **SB 437**.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 17, 2004.