

## MINUTES

### SPECIAL COMMITTEE ON JUDICIARY

August 16-17, 2007  
Room 123-S—Statehouse

#### Members Present

Senator John Vratil, Chairperson  
Representative Mike O'Neal, Vice-Chairperson  
Senator Greta Goodwin  
Senator Phil Journey  
Senator Julia Lynn  
Senator Derek Schmidt  
Representative Marti Crow  
Representative Lance Kinzer  
Representative Bill Light  
Representative Jan Pauls  
Representative Marc Rhoades

#### Members Absent

Representative Sydney Carlin  
Representative Marti Crow ( August 17)  
Representative Vern Swanson

#### Staff

Jill Wolters, Office of the Revisor of Statutes  
Bruce Kinzie, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Jerry Donaldson, Kansas Legislative Research Department  
Emalene Correll, Kansas Legislative Research Department  
Carol Benoit, Legislative Liaison for Senator John Vratil  
Ann McMorris, Committee Secretary

#### Conferees—Topic No. 8 – Aggravated Incest (August 16)

Ervin Grant, Attorney, Member of Alliance to Recognize and End Abuse  
Paula Fritschen, Liaison, Member of Alliance to Recognize and End Abuse  
Jack Dickson, Pastor, Member of Alliance to Recognize and End Abuse  
Marilyn Wolgemuth, Psychiatric Nurse, Member of Alliance to Recognize and End Abuse  
Ed Klumpp, Legislative Chairperson, Kansas Association of Chiefs of Police

Helen Pedigo, Executive Director, Kansas Sentencing Commission  
Sandra Barnett, Executive Director, Kansas Coalition Against Domestic and Sexual Violence

**Conferees**—Topic No. 7 – Interference with Parental Custody (August 16)

Sandra Barnett, Executive Director, Kansas Coalition Against Domestic and Sexual Violence  
Sue Osthoff, Director, National Clearinghouse for the Defense of Battered Women  
(conference call)  
Sandra Murphy, Managing Attorney, Battered Women’s Justice Project  
Ron Nelson, Attorney  
N. Trip Shawver, Attorney, Past-President of the KBA Family Law Section  
Ed Klumpp, Kansas Association of Chiefs of Police  
Jacqie Spradling, Assistant Attorney General

**Conferees**—Topic No. 9 – Establishment of District Attorneys Offices (August 17)

Senator Derek Schmidt  
Kyle Smith, Director, Public Information, KBI  
Brad Harrelson, Kansas Farm Bureau  
Robert Gale, Jr., Hamilton County Attorney  
John Settle, Pawnee County Attorney  
Randall Allen, Kansas Association of Counties  
Doug Smith, Kansas Legislative Policy Group  
Ed Brancart, Kansas County and District Attorneys Association

**Thursday, August 16  
Morning Session**

Chairperson Vratil announced that the LCC has authorized ten meeting dates and 15 topics for study and recommendations by the Special Committee on Judiciary. He called attention to the guidelines for conferees appearing before this Committee. He noted that his plan is to hold the hearings on topics assigned each meeting and at the next scheduled meeting to ask for recommendations from the Committee on those topics heard at the prior meeting. In this manner, the topics will be taken up in a timely fashion and not be held until the conclusion of all hearings.

The Chairperson opened the hearing on Topic No. 8 – Aggravated Incest.

Ervin Grant, Attorney, Member of Alliance to Recognize and End Abuse, offered proposed revisions to the Kansas SB 233 Aggravated Incest Statute. The proposed revision contains the addition of the words “non-drug, off-grid” in the last paragraph and would change the age covered to be all victims of incest under age 18. His testimony and the proposed new language are attached ([Attachment 1](#)).

Paula Fritschen, Liaison, Member of Alliance to Recognize and End Abuse, cited several cases and strongly stated that if we do not punish adult perpetrators of incest, we are telling their children that they are not as important as their violators and that what happened to them does not have much meaning in Kansas ([Attachment 2](#)).

Jack Dickson, Pastor, Member of Alliance to Recognize and End Abuse, spoke of the need for legislation that would protect those children who suffered from the terrible actions of their fathers. He cited many cases where he had provided counseling and could not stress enough the harm done to these children. He urged the passage of SB 233 with provision that prosecutors be allowed the option of filing for incest rather than rape. He cited the various statutes in Kansas covering rape, incest, *et al* ([Attachment 3](#)).

Marilyn Wolgemuth, Psychiatric Nurse, Member of Alliance to Recognize and End Abuse, presented letters written by two sisters and their mother regarding the incest they had experienced from their father ([Attachment 4](#)).

Senator Peggy Palmer of the Sixteenth District who sponsored SB 233 provided written testimony ([Attachment 5](#)).

Ed Klumpp, Legislative Chairperson, Kansas Association of Chiefs of Police, on behalf of their Association, stated the Association does not oppose the provisions of increasing penalties for the crimes addressed in SB 233 but has a concern with the proposed level of the amended sentencing and also with several likely unintended consequences of these changes. He cited the coordinated network of statutes regarding sexual offenses against children. All of these statutes must be considered as one package of integrated statutes when amending any of them. He summarized by stating the Association does not feel the proposed changes meet the sentencing proportionality concerns. These issues may best be resolved in the study of overall proportionality of all sentencing, rather than continue in a piecemeal approach. The Association does not support the amendments as proposed at this time ([Attachment 6](#)).

Helen Pedigo, Executive Director, Kansas Sentencing Commission, discussed the prison bed impact produced by the Kansas Sentencing Commission. She also summarized her concerns about the proportionality of the severity level for this crime as proposed by this bill ([Attachment 7](#)).

Sandra Barnett, Executive Director, Kansas Coalition Against Domestic and Sexual Violence, offered two ways to remedy the sentencing situation without making all sex crimes into Level 1 felonies. She cited various sections and offered proposed new language or deletions ([Attachment 8](#)).

Written testimony was provided by Steve Kearney, Executive Director, Kansas County and District Attorneys Association ([Attachment 9](#)).

Mary Jo Grant, PhD Psychologist, noted the Committee has a very difficult job to consider all the things that this involves. We need to amend the criminal law to make the penalty for the crime of incest consistent with the crime of rape. It sometimes takes years of therapy to help those who have been sexually abused ([Attachment 10](#)).

The Chairperson closed the hearing on Topic No. 8 – Aggravated Incest.

The Committee recessed for lunch until 1:30 p.m.

## Afternoon Session

The Chairperson opened the hearing on Topic No. 7 – Allow a Parent to Remove a Child from the Custodial Parent to Protect the Child from Abuse (interference with parental custody).

Sandra Barnett, Executive Director, Kansas Coalition Against Domestic and Sexual Violence, introduced the various proponents and reviewed the materials provided to the Committee. The Coalition proposed that an exception and a defense be inserted into the interference with parental custody and aggravated interference with parental custody statutes to recognize that fleeing from domestic violence or child abuse is NOT the same as child abduction. The Coalition strongly urges this Committee to recommend necessary updates to the Kansas interference with parental custody laws ([Attachment 11](#)).

Sue Osthoff, Director, National Clearinghouse for the Defense of Battered Women, Philadelphia, PA, contributed her testimony by conference call. She cited the United States Attorney General's study to gain additional information about the impact of current state and federal parental kidnapping laws on cases involving domestic violence. Based on study, it concluded that current laws and practices often penalize domestic violence survivors when they flee to safety. She noted many states have recognized the need to change current laws and practices to enhance safeguards for protective parents and their children. Recommendations were: (1) that statutes include exceptions to prosecution, reasonable prerequisites (if any), and defenses that take into account a history of abuse; (2) that states consider amending state parental kidnapping laws to include legal protections for victims and provide a preliminary list summarizing statutory elements that would more effectively protect domestic violence survivors ([Attachment 12](#)).

Sandra Murphy, Managing Attorney for the Battered Women's Justice Project, was concerned with the failure to look at the context of flight – a protective parent's reasons for fleeing with the children. It is vital that prosecutors and law enforcement understand and appreciate the context of interstate and intrastate flight so they can conduct an investigation that is thorough and deliberate and refrains from penalizing a battered parent and the children ([Attachment 13](#)).

Merle Werner, Professor of Law, University of Oregon School of Law, presented written testimony ([Attachment 14](#)).

Ron Nelson, Attorney, Law Offices of Nelson & Booth, Shawnee Mission, Kansas, noted his practice has been especially focused on high conflict child custody cases, which sometimes involve interstate and international child custody, jurisdiction and support issues. This interim proposal would hamstring the efforts of local, state and federal law enforcement authorities and others from searching out missing and abducted children and would sanction behavior far more abusive than that which it seeks to remedy. This interim proposal runs counter to efforts over the last 30 years to protect children from being used as a pawn and runs counter to advances in practice in that time whereby it is now much easier to protect children from family abductions. The change proposed is the opposite way in which the criminal parental interference law needs modification ([Attachment 15](#)).

N. Trip Shawver, Attorney, Wichita, Kansas and President of the Kansas Bar Association Family Law Section, feels the current law allows for an orderly process, protecting the rights of the child and the parents and respecting court orders. This proposed bill allows for the protection from arrest of those individuals who have abducted children from Kansas and ostensibly individuals who have abducted children from other states and brought them to Kansas in violation of a court order. There is no other law in the Kansas civil statutes that directs that a person who has committed a crime cannot be arrested. The legislation should not be adopted ([Attachment 16](#)).

Mr. Shawver had assembled a 34-page document of Criminal Custodial Interference – State Statutes (through July 2006). Due to the length of this document, it was not copied to the Committee. A copy of this document can be viewed in the Legislative Research Department office.

Ed Klumpp, Kansas Association of Chiefs of Police, opposed SB 182. The proposed amendments would result in hundreds of lost law enforcement hours. The prohibition of arrest will inhibit, if not prohibit, law enforcement from detaining the person taking the child until the facts can be determined. And worse yet, it does not allow for the detention of the child until the facts can be determined. Notification of the county or district attorney “as soon as circumstances allow” is also problematic. This bill is totally unworkable from a law enforcement standpoint. Mr. Klumpp provided supplemental written testimony to formally include several points he had verbally added during his testimony ([Attachment 17](#)).

Jacqie Spradling, Assistant Attorney General, cited several problems with the bill. First, allowing the parent to remove a child from legal custody based on their own analysis of “mistreatment or abuse”; second, this bill’s language prohibits an arrest of the detaining parent; and (3) it would inhibit law enforcement’s ability to determine the facts of the situation ([Attachment 18](#)).

Written testimony was submitted by Steve Kearney, Executive Director, Kansas County and District Attorneys Association ([Attachment 19](#)).

The Chairperson closed the hearing on Topic No. 7 – Allow a Parent to remove a child from the Custodial Parent to protect the child from Abuse (interference with Parental Custody).

The meeting was adjourned.

### **Friday, August 17 Morning Session**

Chairperson Vratil opened the hearing on Topic No. 9 – Establishment of District Attorneys Offices.

Senator Derek Schmidt presented testimony in support of legislation to allow local voters to decide whether to move from a county attorney system to a district attorney system for handling criminal prosecutions. He reviewed (1) prior House of Representatives consideration of this topic; (2) 2006 Interim Assessment and Taxation deliberations in examining options that could reduce reliance on property taxes to fund government services; (3) 2007 SB 254 which was introduced in the Senate Judiciary Committee but no hearings were scheduled, so today is its first airing; and (4) advantages of the general approach. He urged the Committee to focus on this important issue of modernizing the prosecution function in those parts of Kansas where voters desire it ([Attachment 20](#)).

Kyle Smith noted he was testifying in his personal and private capacity and not on behalf of the KBI or any law enforcement organization. He reviewed the role of the prosecutor in the criminal justice system and his experience in various capacities in prosecuting cases all over Kansas. He noted allowing private practices to compensate for the poor pay is an invitation for conflicts, real or perceived. The low pay discourages talented people from entering the field, and encourages experienced trial attorneys to leave the profession. He urged the Committee to consider the issues and possibly propose a better system that will provide quality representation for all Kansans in all counties ([Attachment 21](#)).

Brad Harrelson, State Policy Director, Kansas Farm Bureau, provided written testimony ([Attachment 22](#)).

Robert Gale, Jr., Hamilton County Attorney, testified that one of the fundamental flaws in this bill is the reasoning that the prosecutor should not engage in private practice in order to be an effective prosecutor. He cited the experience with the public defender system as an example. He objected to this bill for two reasons: (1) this will shift a significant obligation from the counties to the State; and (2) counties that change from a traditional county attorney system to the district attorney system will not realize any significant tax savings. He suggested if the district attorney system is approved, that a position of "county or deputy" district attorney be mandated for each county and this position not prohibit private practice (Attachment 23).

John Settle, Pawnee County Attorney, opposed SB 254 because the piecemeal approach of SB 254 will provide little benefits, if any, to the citizens of Kansas (Attachment 24).

Randall Allen, Kansas Association of Counties, stated the Association is presently neutral. The Association is in the process of considering 2008 legislative policy recommendations for consideration of its membership. He noted three provisions in SB 254 are especially important to Kansas counties: (1) allows county commissioners to place the issue before the voters; (2) role of county attorney would be a consideration in adopting district attorney system; (3) bill provides for state funding of district attorney offices (Attachment 25).

Doug Smith, Kansas Legislative Policy Group, stated KLPG believes some counties in Kansas could benefit from the creation of an office of district attorney. Mr. Smith voiced several concerns and questions (Attachment 26).

Ed Brancart, Kansas County and District Attorneys Association, highlighted some of the many issues associated with moving from the current prosecuting attorney system to a statewide district attorney system. He urged the Committee to give study and discussion to the Association's concerns (Attachment 27).

Jim Clark, Kansas Bar Association, commented briefly on the district attorney programs in existence in Oklahoma and Colorado. He felt the local election was a good idea. He suggested having an elected official to handle felonies only.

The Chairperson closed the hearing on Topic No. 9 – Establishment of District Attorneys Offices.

NOTE: After each presentation during the two day meeting, the Chairperson afforded the Committee members an opportunity to ask questions of the conferee.

The next meetings of the Committee will be on August 27 and August 28, 2007.

The meeting was adjourned.

Prepared by Ann McMorris  
Edited by Athena Andaya

Approved by Committee on:

August 27, 2007

(Date)