

Approved: March 8, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 16, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused
Representative Dale Swenson - Excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Ward Loyd
Representative Kathe Lloyd
Greg Debacker, National Congress for Fathers & Children
Representative Jerry Aday
Patrick Brazil, Chief Judge, Kansas Court of Appeals
Sandy Jacqot, League of Kansas Municipalities
Kirk Lowry, President, Kansas Trial Lawyers
Representative Michael O'Neal

Hearing on **HB 2785 - child custody when primary residential custodial parent is deceased**, was opened.

Representative Ward Loyd appeared as one of the sponsors of the proposed bill. He stated that there are instances where a non-custodial parent would not be the best person to raise a child. The bill would allow the courts to always determine what the best interest of the child when the custodial parent has died. (Attachment 1)

Representative Kathe Lloyd also appeared as one of the sponsor of the bill. She got interested in the bill when she saw an ABC special called "When Will The Children Have a Voice." It told the story of a 10-year-old boy whose mother had remarried and then got killed in a car accident. The boy's biological father, whom he had no contact with for a period of six years, wanted the child. A court battle took place and the judge ruled that the child belonged with the biological father. There are many good non-custodial parents but there are also bad ones that never have contact with their children and should not be able to have custody just because something happened to the custodial parent. (Attachment 2)

Greg Debacker, provided the committee with an recent article regarding a Philadelphia case where the Pennsylvania Supreme Court declined give a 10-year-old boy to his biological father. Not because he was unfit, but because the loss of his mother, the absence of his stepbrother, stepsister and stepfather would cause more up evil in the child's life. (Attachment 3)

Hearing on **HB 2785** was closed.

Hearing on **HB 2876 - common-law marriages**, was opened.

Representative Jerry Aday appeared as the sponsor of the bill. He had received information that the Ellsworth Correctional Facility has had problems with common law marriages between inmates and young teenagers. He requested the bill so these types of marriages would be harder for those inmates to have. (Attachments 4)

Hearing on **HB 2876** was closed.

Hearing on **HB 2906 - Court of Appeal discretionary jurisdiction**, was opened.

Judge Patrick Brazil appeared on behalf of the Kansas Court of Appeals, stated that limiting appeals in some cases would allow the Court to spend more time on those that really need it. The bill would allow attorneys to ask for an appeal and then the courts would view the appeal and decided whether it was something they were interested in hearing. He suggested that the Committee request that the Judicial Council study the bill

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and report back next legislative session. (Attachment 5)

Sandy Jacquot appeared in opposition to the bill. She stated that the municipalities are regularly involved in administrative appeals and it is important that they have access to the Court of Appeals as a matter of right on behalf of taxpayers. (Attachment 6)

Kirk Lowry, oppose the bill and believes that adding four new judges to the Court would help with their caseload. Everyone should have the option of appealing to the Court and being heard. (Attachment 7)

Hearing on **HB 2906** was closed.

Hearing on **HB 2907 - filing of cross appeals**, was opened.

Representative Michael O'Neal explained that he requested the bill because it had come to his attention that there was no procedure for cross-appeals within the workers compensation statutes.

Hearing on **HB 2907** was closed.

HB 2906 - Court of Appeals discretionary jurisdiction

The committee recommended that the Kansas Judicial Council study the bill and report back to the 2001 Legislature.

HB 2673 - increasing the dollar amounts in the probate code

Representative Carmody made the motion to insert on page 2, line 22 after the word deceased, "subject to probate". Representative Loyd seconded the motion. The motion carried.

Representative Carmody made the motion to report **HB 2673** favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

HB 2209 - wage garnishment, assignment of account, benefit entitlement restriction

Representative Carmody made the motion to report **HB 2209** with revisors technical changes, favorably for passage. Representative Long seconded the motion. The motion carried 7-6.

HB 2372 - Retirement system for justices & judges, retirement age

Representative Carmody made the motion to withdraw the **HB 2372** from the table. Representative Loyd seconded the motion. The Chairman reminded the committee that as it stands, the bill would be effective upon publication of the Kansas Register. Representative Klein stated that the passage of this bill would be tampering with the election process and didn't believe this was a good policy. The motion carried

Representative Carmody made the motion to withdraw the amendment that would make it effective upon publication in the Kansas Register. Permission from the second, Representative Flaharty, was denied. She commented that retirement age should be subject to fairness and equity so when the law is applied it would encompassed all judges who are currently elected.

Representative Carmody made the motion to report **HB 2372** favorably for passage. Representative Lightner seconded the motion.

Representative Haley made the substitute motion to table the bill. Representative Klein seconded the motion. The motion failed 5-7.

The motion to report **HB 2372** failed 4-8.

HB 2775 - abatement of common nuisances adding felonies committed by gang members to list of unlawful activities

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Representative Loyd made the motion to report **HB 2775** favorably for passage. Representative Carmody seconded the motion. The motion carried.

HB 2501 - Enacting the Uniform Principal & Income Act

Representative Carmody made the motion to report **HB 2501** favorably for passage. Representative Lightner seconded the motion.

Representative Crow made the substitute motion to amend on page 3, adding the site for K.S.A. prudent investor statute. Representative Carmody seconded the motion. The motion carried.

Representative Carmody made the motion to report **HB 2501** favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

HB 2805 - theft detection shielding devices

Representative Pauls made the motion to amend in a balloon amendment.(Attachment 8) Representative Long seconded the motion. The motion carried

Representative Carmody made the motion to report **HB 2805** favorably for passage, as amended. Representative Lightner seconded the motion. The motion carried.

The committee adjourned at 5:00 p.m. The next meeting was scheduled for February 17, 2000.