

## HOUSE BILL No. 2967

By Committee on Judiciary

2-15

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AN ACT concerning divorce and maintenance; requiring child support for special education students who continue in school until age 21; amending K.S.A. 2001 Supp. 60-1610 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2001 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child

1 becomes 19 years of age so long as the child is a bona fide high school  
2 student and the parents jointly participated or knowingly acquiesced in  
3 the decision which delayed the child's completion of high school *or the*  
4 *child is enrolled full time in a special education program, in which case*  
5 *child support shall be paid until the child attains the age of 21, with a*  
6 *reduction that corresponds with any financial aid the student receives*  
7 *from a governmental entity as a result of such student's special education*  
8 *status.* The court, in extending support pursuant to subsection (a)(1)(C),  
9 may impose such conditions as are appropriate and shall set the child  
10 support utilizing the guideline table category for 16-year through 18-year  
11 old children. Provision for payment of support and educational expenses  
12 of a child after reaching 18 years of age if still attending high school shall  
13 apply to any child subject to the jurisdiction of the court, including those  
14 whose support was ordered prior to July 1, 1992. If an agreement ap-  
15 proved by the court prior to July 1, 1988, provides for termination of  
16 support before the date provided by subsection (a)(1)(B), the court may  
17 review and modify such agreement, and any order based on such agree-  
18 ment, to extend the date for termination of support to the date provided  
19 by subsection (a)(1)(B). If an agreement approved by the court prior to  
20 July 1, 1992, provides for termination of support before the date provided  
21 by subsection (a)(1)(C), the court may review and modify such agreement,  
22 and any order based on such agreement, to extend the date for termi-  
23 nation of support to the date provided by subsection (a)(1)(C). For pur-  
24 poses of this section, "bona fide high school student" means a student  
25 who is enrolled in full accordance with the policy of the accredited high  
26 school in which the student is pursuing a high school diploma or a grad-  
27 uate equivalency diploma (GED). In determining the amount to be paid  
28 for child support, the court shall consider all relevant factors, without  
29 regard to marital misconduct, including the financial resources and needs  
30 of both parents, the financial resources and needs of the child and the  
31 physical and emotional condition of the child. Until a child reaches 18  
32 years of age, the court may set apart any portion of property of either the  
33 husband or wife, or both, that seems necessary and proper for the support  
34 of the child. Except for good cause shown, every order requiring payment  
35 of child support under this section shall require that the support be paid  
36 through the central unit for collection and disbursement of support pay-  
37 ments designated pursuant to K.S.A. 23-4,118, and amendments thereto.  
38 A written agreement between the parties to make direct child support  
39 payments to the obligee and not pay through the central unit shall con-  
40 stitute good cause, unless the court finds the agreement is not in the best  
41 interest of the child or children. The obligor shall file such written agree-  
42 ment with the court. The obligor shall maintain written evidence of the  
43 payment of the support obligation and, at least annually, shall provide

1 such evidence to the court and the obligee. If the divorce decree of the  
2 parties provides for an abatement of child support during any period  
3 provided in such decree, the child support such nonresidential parent  
4 owes for such period shall abate during such period of time, except that  
5 if the residential parent shows that the criteria for the abatement has not  
6 been satisfied there shall not be an abatement of such child support.

7 (2) *Child custody and residency. (A) Changes in custody.* Subject to  
8 the provisions of the uniform child custody jurisdiction and enforcement  
9 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the  
10 court may change or modify any prior order of custody, residency, visi-  
11 tation and parenting time, when a material change of circumstances is  
12 shown, but no ex parte order shall have the effect of changing residency  
13 of a minor child from the parent who has had the sole de facto residency  
14 of the child to the other parent unless there is sworn testimony to support  
15 a showing of extraordinary circumstances. If an interlocutory order is  
16 issued ex parte, the court shall hear a motion to vacate or modify the  
17 order within 15 days of the date that a party requests a hearing whether  
18 to vacate or modify the order.

19 (B) *Examination of parties.* The court may order physical or mental  
20 examinations of the parties if requested pursuant to K.S.A. 60-235 and  
21 amendments thereto.

22 (3) *Child custody or residency criteria.* The court shall determine  
23 custody or residency of a child in accordance with the best interests of  
24 the child.

25 (A) If the parties have entered into a parenting plan, it shall be pre-  
26 sumed that the agreement is in the best interests of the child. This pre-  
27 sumption may be overcome and the court may make a different order if  
28 the court makes specific findings of fact stating why the agreed parenting  
29 plan is not in the best interests of the child.

30 (B) In determining the issue of child custody, residency and parent-  
31 ing time, the court shall consider all relevant factors, including but not  
32 limited to:

33 (i) The length of time that the child has been under the actual care  
34 and control of any person other than a parent and the circumstances  
35 relating thereto;

36 (ii) the desires of the child's parents as to custody or residency;

37 (iii) the desires of the child as to the child's custody or residency;

38 (iv) the interaction and interrelationship of the child with parents,  
39 siblings and any other person who may significantly affect the child's best  
40 interests;

41 (v) the child's adjustment to the child's home, school and community;

42 (vi) the willingness and ability of each parent to respect and appre-  
43 ciate the bond between the child and the other parent and to allow for a

1 continuing relationship between the child and the other parent; and

2 (vii) evidence of spousal abuse.

3 Neither parent shall be considered to have a vested interest in the  
4 custody or residency of any child as against the other parent, regardless  
5 of the age of the child, and there shall be no presumption that it is in the  
6 best interests of any infant or young child to give custody or residency to  
7 the mother.

8 (4) *Types of legal custodial arrangements.* Subject to the provisions  
9 of this article, the court may make any order relating to custodial arrange-  
10 ments which is in the best interests of the child. The order shall provide  
11 one of the following legal custody arrangements, in the order of  
12 preference:

13 (A) *Joint legal custody.* The court may order the joint legal custody  
14 of a child with both parties. In that event, the parties shall have equal  
15 rights to make decisions in the best interests of the child.

16 (B) *Sole legal custody.* The court may order the sole legal custody of  
17 a child with one of the parties when the court finds that it is not in the  
18 best interests of the child that both of the parties have equal rights to  
19 make decisions pertaining to the child. If the court does not order joint  
20 legal custody, the court shall include on the record specific findings of  
21 fact upon which the order for sole legal custody is based. The award of  
22 sole legal custody to one parent shall not deprive the other parent of  
23 access to information regarding the child unless the court shall so order,  
24 stating the reasons for that determination.

25 (5) *Types of residential arrangements.* After making a determination  
26 of the legal custodial arrangements, the court shall determine the resi-  
27 dency of the child from the following options, which arrangement the  
28 court must find to be in the best interest of the child. The parties shall  
29 submit to the court either an agreed parenting plan or, in the case of  
30 dispute, proposed parenting plans for the court's consideration. Such op-  
31 tions are:

32 (A) *Residency.* The court may order a residential arrangement in  
33 which the child resides with one or both parents on a basis consistent  
34 with the best interests of the child.

35 (B) *Divided residency.* In an exceptional case, the court may order a  
36 residential arrangement in which one or more children reside with each  
37 parent and have parenting time with the other.

38 (C) *Nonparental residency.* If during the proceedings the court de-  
39 termines that there is probable cause to believe that the child is a child  
40 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-  
41 1502 and amendments thereto or that neither parent is fit to have resi-  
42 dency, the court may award temporary residency of the child to a grand-  
43 parent, aunt, uncle or adult sibling, or, another person or agency if the

1 court finds the award of custody to such person or agency is in the best  
2 interests of the child. In making such a residency order, the court shall  
3 give preference, to the extent that the court finds it is in the best interests  
4 of the child, first to awarding such residency to a relative of the child by  
5 blood, marriage or adoption and second to awarding such residency to  
6 another person with whom the child has close emotional ties. The court  
7 may make temporary orders for care, support, education and visitation  
8 that it considers appropriate. Temporary residency orders are to be entered  
9 in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-  
10 1543, and amendments thereto, and shall remain in effect until there is  
11 a final determination under the Kansas code for care of children. An  
12 award of temporary residency under this paragraph shall not terminate  
13 parental rights nor give the court the authority to consent to the adoption  
14 of the child. When the court enters orders awarding temporary residency  
15 of the child to an agency or a person other than the parent, the court  
16 shall refer a transcript of the proceedings to the county or district attorney.  
17 The county or district attorney shall file a petition as provided in  
18 K.S.A. 38-1531 and amendments thereto and may request termination of  
19 parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The  
20 costs of the proceedings shall be paid from the general fund of the county.  
21 When a final determination is made that the child is not a child in need  
22 of care, the county or district attorney shall notify the court in writing  
23 and the court, after a hearing, shall enter appropriate custody orders  
24 pursuant to this section. If the same judge presides over both proceedings,  
25 the notice is not required. Any disposition pursuant to the Kansas code  
26 for care of children shall be binding and shall supersede any order under  
27 this section.

28 (b) *Financial matters.* (1) *Division of property.* The decree shall divide  
29 the real and personal property of the parties, including any retirement  
30 and pension plans, whether owned by either spouse prior to marriage,  
31 acquired by either spouse in the spouse's own right after marriage  
32 or acquired by the spouses' joint efforts, by: (A) a division of the property  
33 in kind; (B) awarding the property or part of the property to one of the  
34 spouses and requiring the other to pay a just and proper sum; or (C)  
35 ordering a sale of the property, under conditions prescribed by the court,  
36 and dividing the proceeds of the sale. Upon request, the trial court shall  
37 set a valuation date to be used for all assets at trial, which may be the  
38 date of separation, filing or trial as the facts and circumstances of the case  
39 may dictate. The trial court may consider evidence regarding changes in  
40 value of various assets before and after the valuation date in making the  
41 division of property. In dividing defined-contribution types of retirement  
42 and pension plans, the court shall allocate profits and losses on the non-  
43 participant's portion until date of distribution to that nonparticipant. In

1 making the division of property the court shall consider the age of the  
2 parties; the duration of the marriage; the property owned by the parties;  
3 their present and future earning capacities; the time, source and manner  
4 of acquisition of property; family ties and obligations; the allowance of  
5 maintenance or lack thereof; dissipation of assets; the tax consequences  
6 of the property division upon the respective economic circumstances of  
7 the parties; and such other factors as the court considers necessary to  
8 make a just and reasonable division of property. The decree shall provide  
9 for any changes in beneficiary designation on: (A) Any insurance or an-  
10 nuity policy that is owned by the parties, or in the case of group life  
11 insurance policies, under which either of the parties is a covered person;  
12 (B) any trust instrument under which one party is the grantor or holds a  
13 power of appointment over part or all of the trust assets, that may be  
14 exercised in favor of either party; or (C) any transfer on death or payable  
15 on death account under which one or both of the parties are owners or  
16 beneficiaries. Nothing in this section shall relieve the parties of the ob-  
17 ligation to effectuate any change in beneficiary designation by the filing  
18 of such change with the insurer or issuer in accordance with the terms  
19 of such policy.

20 (2) *Maintenance*. The decree may award to either party an allowance  
21 for future support denominated as maintenance, in an amount the court  
22 finds to be fair, just and equitable under all of the circumstances. The  
23 decree may make the future payments modifiable or terminable under  
24 circumstances prescribed in the decree. The court may make a modifi-  
25 cation of maintenance retroactive to a date at least one month after the  
26 date that the motion to modify was filed with the court. In any event, the  
27 court may not award maintenance for a period of time in excess of 121  
28 months. If the original court decree reserves the power of the court to  
29 hear subsequent motions for reinstatement of maintenance and such a  
30 motion is filed prior to the expiration of the stated period of time for  
31 maintenance payments, the court shall have jurisdiction to hear a motion  
32 by the recipient of the maintenance to reinstate the maintenance pay-  
33 ments. Upon motion and hearing, the court may reinstate the payments  
34 in whole or in part for a period of time, conditioned upon any modifying  
35 or terminating circumstances prescribed by the court, but the reinstate-  
36 ment shall be limited to a period of time not exceeding 121 months. The  
37 recipient may file subsequent motions for reinstatement of maintenance  
38 prior to the expiration of subsequent periods of time for maintenance  
39 payments to be made, but no single period of reinstatement ordered by  
40 the court may exceed 121 months. Maintenance may be in a lump sum,  
41 in periodic payments, on a percentage of earnings or on any other basis.  
42 At any time, on a hearing with reasonable notice to the party affected,  
43 the court may modify the amounts or other conditions for the payment

1 of any portion of the maintenance originally awarded that has not already  
2 become due, but no modification shall be made without the consent of  
3 the party liable for the maintenance, if it has the effect of increasing or  
4 accelerating the liability for the unpaid maintenance beyond what was  
5 prescribed in the original decree. Except for good cause shown, every  
6 order requiring payment of maintenance under this section shall require  
7 that the maintenance be paid through the central unit for collection and  
8 disbursement of support payments designated pursuant to K.S.A. 23-  
9 4,118, and amendments thereto. A written agreement between the parties  
10 to make direct maintenance payments to the obligee and not pay through  
11 the central unit shall constitute good cause. If child support and main-  
12 tenance payments are both made to an obligee by the same obligor, and  
13 if the court has made a determination concerning the manner of payment  
14 of child support, then maintenance payments shall be paid in the same  
15 manner.

16 (3) *Separation agreement.* If the parties have entered into a separa-  
17 tion agreement which the court finds to be valid, just and equitable, the  
18 agreement shall be incorporated in the decree. A separation agreement  
19 may include provisions relating to a parenting plan. The provisions of the  
20 agreement on all matters settled by it shall be confirmed in the decree  
21 except that any provisions relating to the legal custody, residency, visita-  
22 tion parenting time, support or education of the minor children shall be  
23 subject to the control of the court in accordance with all other provisions  
24 of this article. Matters settled by an agreement incorporated in the de-  
25 cree, other than matters pertaining to the legal custody, residency, visi-  
26 tation, parenting time, support or education of the minor children, shall  
27 not be subject to subsequent modification by the court except: (A) As  
28 prescribed by the agreement or (B) as subsequently consented to by the  
29 parties.

30 (4) *Costs and fees.* Costs and attorney fees may be awarded to either  
31 party as justice and equity require. The court may order that the amount  
32 be paid directly to the attorney, who may enforce the order in the attor-  
33 ney's name in the same case.

34 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request  
35 of a spouse, the court shall order the restoration of that spouse's maiden  
36 or former name.

37 (2) *Effective date as to remarriage.* Any marriage contracted by a  
38 party, within or outside this state, with any other person before a judg-  
39 ment of divorce becomes final shall be voidable until the decree of divorce  
40 becomes final. An agreement which waives the right of appeal from the  
41 granting of the divorce and which is incorporated into the decree or  
42 signed by the parties and filed in the case shall be effective to shorten  
43 the period of time during which the remarriage is voidable.

1     Sec. 2. K.S.A. 2001 Supp. 60-1610 is hereby repealed.

2     Sec. 3. This act shall take effect and be in force from and after its  
3 publication in the statute book.

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