

SENATE BILL No. 61

By Committee on Judiciary

1-20

9 AN ACT concerning civil procedure; relating to the residency of a child;
10 amending K.S.A. 2004 Supp. 60-1610 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2004 Supp. 60-1610 is hereby amended to read as
15 follows: 60-1610. A decree in an action under this article may include
16 orders on the following matters:

17 (a) *Minor children.* (1) *Child support and education.* The court shall
18 make provisions for the support and education of the minor children. The
19 court may modify or change any prior order, including any order issued
20 in a title IV-D case, within three years of the date of the original order
21 or a modification order, when a material change in circumstances is
22 shown, irrespective of the present domicile of the child or the parents. If
23 more than three years has passed since the date of the original order or
24 modification order, a material change in circumstance need not be shown.
25 The court may make a modification of child support retroactive to a date
26 at least one month after the date that the motion to modify was filed with
27 the court. Any increase in support ordered effective prior to the date the
28 court's judgment is filed shall not become a lien on real property pursuant
29 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
30 custodial arrangement ordered by the court, the court may order the child
31 support and education expenses to be paid by either or both parents for
32 any child less than 18 years of age, at which age the support shall ter-
33minate unless: (A) The parent or parents agree, by written agreement
34 approved by the court, to pay support beyond the time the child reaches
35 18 years of age; (B) the child reaches 18 years of age before completing
36 the child's high school education in which case the support shall not ter-
37minate automatically, unless otherwise ordered by the court, until June
38 30 of the school year during which the child became 18 years of age if
39 the child is still attending high school; or (C) the child is still a bona fide
40 high school student after June 30 of the school year during which the
41 child became 18 years of age, in which case the court, on motion, may
42 order support to continue through the school year during which the child
43 becomes 19 years of age so long as the child is a bona fide high school

1 student and the parents jointly participated or knowingly acquiesced in
2 the decision which delayed the child's completion of high school. The
3 court, in extending support pursuant to subsection (a)(1)(C), may impose
4 such conditions as are appropriate and shall set the child support utilizing
5 the guideline table category for 16-year through 18-year old children.
6 Provision for payment of support and educational expenses of a child after
7 reaching 18 years of age if still attending high school shall apply to any
8 child subject to the jurisdiction of the court, including those whose sup-
9 port was ordered prior to July 1, 1992. If an agreement approved by the
10 court prior to July 1, 1988, provides for termination of support before the
11 date provided by subsection (a)(1)(B), the court may review and modify
12 such agreement, and any order based on such agreement, to extend the
13 date for termination of support to the date provided by subsection
14 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
15 provides for termination of support before the date provided by subsec-
16 tion (a)(1)(C), the court may review and modify such agreement, and any
17 order based on such agreement, to extend the date for termination of
18 support to the date provided by subsection (a)(1)(C). For purposes of this
19 section, "bona fide high school student" means a student who is enrolled
20 in full accordance with the policy of the accredited high school in which
21 the student is pursuing a high school diploma or a graduate equivalency
22 diploma (GED). In determining the amount to be paid for child support,
23 the court shall consider all relevant factors, without regard to marital
24 misconduct, including the financial resources and needs of both parents,
25 the financial resources and needs of the child and the physical and emo-
26 tional condition of the child. Until a child reaches 18 years of age, the
27 court may set apart any portion of property of either the husband or wife,
28 or both, that seems necessary and proper for the support of the child.
29 Except for good cause shown, every order requiring payment of child
30 support under this section shall require that the support be paid through
31 the central unit for collection and disbursement of support payments
32 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A writ-
33 ten agreement between the parties to make direct child support payments
34 to the obligee and not pay through the central unit shall constitute good
35 cause, unless the court finds the agreement is not in the best interest of
36 the child or children. The obligor shall file such written agreement with
37 the court. The obligor shall maintain written evidence of the payment of
38 the support obligation and, at least annually, shall provide such evidence
39 to the court and the obligee. If the divorce decree of the parties provides
40 for an abatement of child support during any period provided in such
41 decree, the child support such nonresidential parent owes for such period
42 shall abate during such period of time, except that if the residential parent
43 shows that the criteria for the abatement has not been satisfied there shall

1 not be an abatement of such child support.

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

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

17 (3) *Child custody or residency criteria.* The court shall determine
18 custody or residency of a child in accordance with the best interests of
19 the child.

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

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

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

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

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

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

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

37 (vi) the willingness and ability of each parent to respect and appre-
38 ciate the bond between the child and the other parent and to allow for a
39 continuing relationship between the child and the other parent; and

40 (vii) evidence of spousal abuse.

41 Neither parent shall be considered to have a vested interest in the
42 custody or residency of any child as against the other parent, regardless
43 of the age of the child, and there shall be no presumption that it is in the

1 best interests of any infant or young child to give custody or residency to
2 the mother.

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

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

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

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

27 (A) *Primary Residency.* The court may order a residential arrange-
28 ment in which the child resides with one or both parents on a basis con-
29 sistent with the best interests of the child.

30 (B) *Shared residency.* The court may order a residential arrangement
31 in which the child resides with both parents on an equal or near equal
32 basis. For the purposes of this paragraph, "equal or near equal" means
33 at least 45% of the child's time, not including eight hours of overnight
34 sleep every night, or time the child is in school or in extracurricular school
35 activities.

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

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

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

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

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

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

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

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

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

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

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

- 1 the period of time during which the remarriage is voidable.
- 2 Sec. 2. K.S.A. 2004 Supp. 60-1610 is hereby repealed.
- 3 Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.