

HOUSE BILL No. 2192

By Committee on Judiciary

1-24

9 AN ACT concerning civil procedure; relating to child support; amending
10 K.S.A. 2006 Supp. 60-1610 and repealing the existing section.

11

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

13 Section 1. K.S.A. 2006 Supp. 60-1610 is hereby amended to read as
14 follows: 60-1610. A decree in an action under this article may include
15 orders on the following matters:

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

1 participated or knowingly acquiesced in the decision which delayed the
2 child's completion of high school; or (D) the child is enrolled in an insti-
3 tution of postsecondary education as defined by K.S.A. 72-9702, and
4 amendments thereto, or a vocational education institution as defined by
5 K.S.A. 72-4450, and amendments thereto, not later than October 1 fol-
6 lowing graduation from high school or, for a child of less than 18 years
7 of age, completion of graduate equivalency diploma, in which case the
8 court, on motion, may order support to continue through the term during
9 which the child completes postsecondary or vocational education program
10 or reaches 23 years of age, whichever first occurs, provided that the child
11 is enrolled on a full-time basis at such an institution, as defined by the
12 institution, during each term, but not including the summer term, and
13 achieves grades sufficient to re-enroll at such an institution for the follow-
14 ing term. To remain eligible for continuation of support pursuant to sub-
15 section (a)(1)(D), at the beginning of each term the child shall submit to
16 each parent a transcript or similar official documentation provided by
17 such institution that identifies the courses the child has enrolled in and
18 has completed for each term, the grades and hours of credit received for
19 each such course, and the courses which the child is enrolled in for the
20 upcoming term and the hours of credit for such courses. The court, in
21 extending support pursuant to subsection (a)(1)(C) or (D), may impose
22 such conditions as are appropriate and shall set the child support utilizing
23 the guideline table category for 16-year through 18-year old children.
24 Provision for payment of support and educational expenses of a child after
25 reaching 18 years of age if still attending high school shall apply to any
26 child subject to the jurisdiction of the court, including those whose sup-
27 port was ordered prior to July 1, 1992. If an agreement approved by the
28 court prior to July 1, 1988, provides for termination of support before the
29 date provided by subsection (a)(1)(B), the court may review and modify
30 such agreement, and any order based on such agreement, to extend the
31 date for termination of support to the date provided by subsection
32 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
33 provides for termination of support before the date provided by subsec-
34 tion (a)(1)(C), the court may review and modify such agreement, and any
35 order based on such agreement, to extend the date for termination of
36 support to the date provided by subsection (a)(1)(C). *The provisions of*
37 *subsection (a)(1)(D) shall not apply to any agreement approved by the*
38 *court prior to July 1, 2007, and shall not apply to any child who is 18*
39 *years of age or older on or before July 1, 2007.* For purposes of this
40 section, "bona fide high school student" means a student who is enrolled
41 in full accordance with the policy of the accredited high school in which
42 the student is pursuing a high school diploma or a graduate equivalency
43 diploma (GED). In determining the amount to be paid for child support,

1 the court shall consider all relevant factors, without regard to marital
2 misconduct, including the financial resources and needs of both parents,
3 the financial resources and needs of the child and the physical and emo-
4 tional condition of the child. Until a child reaches 18 years of age, the
5 court may set apart any portion of property of either the husband or wife,
6 or both, that seems necessary and proper for the support of the child.
7 Except for good cause shown, every order requiring payment of child
8 support under this section shall require that the support be paid through
9 the central unit for collection and disbursement of support payments
10 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A writ-
11 ten agreement between the parties to make direct child support payments
12 to the obligee and not pay through the central unit shall constitute good
13 cause, unless the court finds the agreement is not in the best interest of
14 the child or children. The obligor shall file such written agreement with
15 the court. The obligor shall maintain written evidence of the payment of
16 the support obligation and, at least annually, shall provide such evidence
17 to the court and the obligee. If the divorce decree of the parties provides
18 for an abatement of child support during any period provided in such
19 decree, the child support such nonresidential parent owes for such period
20 shall abate during such period of time, except that if the residential parent
21 shows that the criteria for the abatement has not been satisfied there shall
22 not be an abatement of such child support.

23 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
24 the provisions of the uniform child custody jurisdiction and enforcement
25 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
26 court may change or modify any prior order of custody, residency, visi-
27 tation and parenting time, when a material change of circumstances is
28 shown, but no ex parte order shall have the effect of changing residency
29 of a minor child from the parent who has had the sole de facto residency
30 of the child to the other parent unless there is sworn testimony to support
31 a showing of extraordinary circumstances. If an interlocutory order is
32 issued ex parte, the court shall hear a motion to vacate or modify the
33 order within 15 days of the date that a party requests a hearing whether
34 to vacate or modify the order.

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

38 (3) *Child custody or residency criteria.* The court shall determine
39 custody or residency of a child in accordance with the best interests of
40 the child.

41 (A) If the parties have entered into a parenting plan, it shall be pre-
42 sumed that the agreement is in the best interests of the child. This pre-
43 sumption may be overcome and the court may make a different order if

1 the court makes specific findings of fact stating why the agreed parenting
2 plan is not in the best interests of the child.

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

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

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

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

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

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

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

18 (vii) evidence of spousal abuse;

19 (viii) whether a parent is subject to the registration requirements of
20 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
21 ments thereto, or any similar act in any other state, or under military or
22 federal law;

23 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
24 21-3609, and amendments thereto;

25 (x) whether a parent is residing with an individual who is subject to
26 registration requirements of the Kansas offender registration act, K.S.A.
27 22-4901, et seq., and amendments thereto, or any similar act in any other
28 state, or under military or federal law; and

29 (xi) whether a parent is residing with an individual who has been
30 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

31 (C) Neither parent shall be considered to have a vested interest in
32 the custody or residency of any child as against the other parent, regard-
33 less of the age of the child, and there shall be no presumption that it is
34 in the best interests of any infant or young child to give custody or resi-
35 dency to the mother.

36 (D) There shall be a rebuttable presumption that it is not in the best
37 interest of the child to have custody or residency granted to a parent who:

38 (i) Is residing with an individual who is subject to registration require-
39 ments of the Kansas offender registration act, K.S.A. 22-4901, et seq.,
40 and amendments thereto, or any similar act in any other state, or under
41 military or federal law; or

42 (ii) is residing with an individual who has been convicted of abuse of
43 a child, K.S.A. 21-3609, and amendments thereto.

1 (4) *Types of legal custodial arrangements.* Subject to the provisions
2 of this article, the court may make any order relating to custodial arrange-
3 ments which is in the best interests of the child. The order shall provide
4 one of the following legal custody arrangements, in the order of prefer-
5 ence: (A) *Joint legal custody.* The court may order the joint legal custody
6 of a child with both parties. In that event, the parties shall have equal
7 rights to make decisions in the best interests of the child.

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

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

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

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

30 (C) *Nonparental residency.* If during the proceedings the court de-
31 termines that there is probable cause to believe that the child is a child
32 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
33 of K.S.A. 2006 Supp. 38-2202, and amendments thereto, or that neither
34 parent is fit to have residency, the court may award temporary residency
35 of the child to a grandparent, aunt, uncle or adult sibling, or, another
36 person or agency if the court finds by written order that: (i) (a) The child
37 is likely to sustain harm if not immediately removed from the home;

38 (b) allowing the child to remain in home is contrary to the welfare of
39 the child; or

40 (c) immediate placement of the child is in the best interest of the
41 child; and

42 (ii) reasonable efforts have been made to maintain the family unit
43 and prevent the unnecessary removal of the child from the child's home

1 or that an emergency exists which threatens the safety to the child. In
2 making such a residency order, the court shall give preference, to the
3 extent that the court finds it is in the best interests of the child, first to
4 awarding such residency to a relative of the child by blood, marriage or
5 adoption and second to awarding such residency to another person with
6 whom the child has close emotional ties. The court may make temporary
7 orders for care, support, education and visitation that it considers appro-
8 priate. Temporary residency orders are to be entered in lieu of temporary
9 orders provided for in K.S.A. 2006 Supp. 38-2243 and 38-2244, and
10 amendments thereto, and shall remain in effect until there is a final de-
11 termination under the revised Kansas code for care of children. An award
12 of temporary residency under this paragraph shall not terminate parental
13 rights nor give the court the authority to consent to the adoption of the
14 child. When the court enters orders awarding temporary residency of the
15 child to an agency or a person other than the parent, the court shall refer
16 a transcript of the proceedings to the county or district attorney. The
17 county or district attorney shall file a petition as provided in K.S.A. 2006
18 Supp. 38-2234, and amendments thereto, and may request termination
19 of parental rights pursuant to K.S.A. 2006 Supp. 38-2266, and amend-
20 ments thereto. The costs of the proceedings shall be paid from the general
21 fund of the county. When a final determination is made that the child is
22 not a child in need of care, the county or district attorney shall notify the
23 court in writing and the court, after a hearing, shall enter appropriate
24 custody orders pursuant to this section. If the same judge presides over
25 both proceedings, the notice is not required. Any disposition pursuant to
26 the revised Kansas code for care of children shall be binding and shall
27 supersede any order under this section.

28 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
29 vide the real and personal property of the parties, including any retire-
30 ment and pension plans, whether owned by either spouse prior to mar-
31 riage, 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. 2006 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.