

Journal of the Senate

SIXTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, January 31, 2006—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Kelly was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

In my eighty years I've noticed
That when people disagree
With what goes on in others' jobs
They distrust the employees.

It's especially true when people
Disagree with politicians.
They accuse us of being ignorant
Or a serious mental condition.

So it's open season on us,
And folks' favorite ammunition
Is an adjective assigning us
To a rather warm condition.

If a bill is passed folks do not like,
Though many voted against the bill;
Everyone is declared guilty
And considered imbeciles.

Unfortunately such attitude
Can obviously only mean
The critics have no idea
What goes on behind the scenes.

Help all our critics who do discover
The pressure on our back
To reconsider what they've said,
And please cut us some slack.

I pray in the Name of Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 477, An act concerning crime, criminal procedure and punishment; relating to victims; polygraph examinations, by Committee on Judiciary.

SB 478, An act concerning crime, criminal procedure and punishment; relating to purchase or consumption of alcoholic beverage by a minor; penalties; amending K.S.A. 2005 Supp. 41-727 and repealing the existing section, by Committee on Judiciary.

SB 479, An act concerning crimes, criminal procedure and punishment; relating to alcohol and drugs; preliminary screening tests; amending K.S.A. 2005 Supp. 8-1001 and 8-1012 and repealing the existing sections, by Committee on Judiciary.

SB 480, An act concerning certain claims against the state, making appropriations, authorizing certain transfers, imposing certain restrictions and limitations, and directing or authorizing certain disbursements, procedures and acts incidental to the foregoing, by Joint Committee on Special Claims Against the State.

SB 481, An act concerning school districts; relating to consolidation; relating to state aid; amending K.S.A. 2005 Supp. 72-6434, 72-6445a, 72-8814 and 75-2319 and repealing the existing sections; also repealing K.S.A. 72-6445, by Committee on Education.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Judiciary: **SB 471**, **SB 472**, **SB 473**, **SB 474**, **SB 476**.

Ways and Means: **SB 475**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2555**, **HB 2602**, **HB 2608**, **HB 2609**.

The House accedes to the request of the Senate for a conference on **SB 164** and has appointed Representatives Vickrey, Hubert and Sawyer as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2555, **HB 2602**, **HB 2608**, **HB 2609** were thereupon introduced and read by title.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Gilstrap as a member of the Conference Committee on **SB 164** to replace Senator Betts.

REPORTS OF STANDING COMMITTEES

Committee on Education recommends **SB 348** be passed.

Committee on **Judiciary** recommends **SB 336** be amended on page 2, in line 23, by striking "eleven" and inserting "13"; in line 27, by striking "one member" and inserting "two members"; in line 40, by striking "and"; in line 42, by striking the period and inserting the following: "; and

(10) the secretary of state or the secretary's designee."; and the bill be passed as amended.

Also, **HB 2352**, as amended by House Committee of the Whole, be amended on page 1, in line 35, by striking "2004" and inserting "2005";

On page 5, in line 28, by striking ", conservator";

On page 6, in line 1, by striking all following "(z)"; by striking all in lines 2 through 22; in line 23, by striking "(aa)";

By relettering the remaining subsections accordingly;

On page 7, in line 9, following the period, by inserting "The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding (section 29, and amendments thereto); ex parte custody orders (section 37, and amendments thereto); temporary custody hearing (section 38, and amendments thereto); adjudication (section 42, and amendments thereto); burden of proof (section 45, and amendments thereto); disposition (section 50, and amendments thereto); permanency hearings (section 59, and amendments thereto); termination of parental rights (sections 62, 63 and 64, and amendments thereto); establishment of permanent custodianship (sections 63 and 67, and amendments thereto); the placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child in a guardianship arrangement under chapter 59, article 30 of the Kansas Statutes Annotated, and amendments thereto.";

On page 8, in line 10, by striking “Any”; by striking all in line 11; in line 12, by striking “record thereof” and inserting “Upon a judge ordering a transfer of venue, the clerk shall transmit the contents of the official file and a complete copy of the social file to the court to which venue is transferred.”;

On page 9, in line 5, by striking “2004 Supp.”; in line 11, by striking “If at”; by striking all in lines 12, 13 and 14; in line 15, by striking all preceding “It”; in line 18, following the period, by inserting “If at any stage of the proceedings a person who is an interested party under subsection (d) of section 36, and amendments thereto, desires but is financially unable to employ an attorney, the court may appoint an attorney for the interested party.”;

On page 10, in line 18, following “case” by inserting “referred to them”; in line 30, by striking all following the period; by striking all in line 31; in line 37, by striking “the six-month review” and inserting “a”;

On page 11, in line 28, by striking “or” and inserting “, a”; also in line 28, following “proceedings” by inserting “, a party”; in line 32, by striking “party” and inserting “person”;

On page 14, in line 12, by striking “2004 Supp.”; in line 14, by striking “2004 Supp.”; in line 16, by striking “2004”; in line 17, by striking “Supp.”; in line 20, by striking “2004 Supp.”; in line 24, by striking “2004 Supp.”; in line 25, by striking “2004 Supp.”; in line 43, following the period, by inserting “As used in this section, a parent is unavailable if: (1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent’s participation and such attempts have been unsuccessful;

(2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or

(3) the parent’s whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent.”;

On page 15, in line 3, by striking all following “(b)”; by striking all in lines 4 through 11; in line 12, by striking “thereafter” and inserting “If the secretary changes the placement of a pupil from one school district to another or to another school within the same district, it shall be the duty of the secretary to transfer, or make provision for the transfer, of all school records of such pupil to the district or school to which the pupil is transferred. Such school records shall be transferred at the same time that the pupil is transferred or as soon as possible thereafter”; in line 13, by striking “exceptional child” and inserting ““exceptional child””; also in line 13, by striking “special” and inserting ““special””; in line 14, by striking “tion” and inserting “tion””; also in line 14, by striking “education advocate” and inserting ““education advocate””; in line 16, following the period, by inserting “The term “pupil” means a child living in a school district as a result of a placement therein by the secretary pursuant to this code.”;

On page 18, in line 12, by striking “2004” and inserting “2005”;

On page 19, in line 13, by striking all following “(3)”; by striking all in lines 14 and 15; in line 16, by striking “suant to the code” and inserting “Any person”; in line 18, following “is” by inserting “guilty of”;

On page 20, in line 17, by striking “2004” and inserting “2005”;

On page 24, in line 19, following “facility” by inserting “or if the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto”; in line 35, by striking “2004” and inserting “2005”;

On page 26, by striking all in lines 17 through 26; preceding line 27, by inserting new material to read as follows:

“(6) If the petition requests custody of the child to the secretary or a person other than the child’s parent, the petition shall specify the efforts known to the petitioner to have been made to maintain the family and prevent the transfer of custody, or it shall specify the facts demonstrating that an emergency exists which threatens the safety to the child.

(7) If the petition requests removal of the child from the child’s home, in addition to the information required by section 29 (a)(6), and amendments thereto, the petition shall specify the facts demonstrating that allowing the child to remain in the home would be contrary to the welfare of the child or that placement is in the best interests of the child and the child is likely to sustain harm if not removed from the home.”;

On page 27, preceding line 5, by inserting new material to read as follows:

(c) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.”;

On page 31, in line 35, following the period, by inserting “The time spent in custody pursuant to section 27, and amendments thereto, shall be included in calculating the 72-hour period.”; in line 37, preceding “protective” by inserting “the”; also in line 37, following “custody” by inserting “of the secretary”;

On page 32, in line 19, by striking “circumstances require, a” and inserting “the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto, the”; in line 37, by striking all following “(1)”; by striking all of lines 38 to 43;

On page 33, by striking all in lines 1 through 3 and inserting “The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (A)(i) the child is likely to sustain harm if not immediately removed from the home;

(ii) allowing the child to remain in home is contrary to the welfare of the child; or

(iii) immediate placement of the child is in the best interest of the child; and

(B) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.”;

On page 34, in line 11, by striking all following “When” and inserting “the child is presently alleged, but not yet adjudicated to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto, the”; in line 27, by striking all following “(1)” by striking all in lines 28 through 36 and inserting “The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (A)(i) the child is likely to sustain harm if not immediately removed from the home;

(ii) allowing the child to remain in home is contrary to the welfare of the child; or

(iii) immediate placement of the child is in the best interest of the child; and

(B) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.”;

On page 36, following line 29, by inserting new material to read as follows:

“(c) Notwithstanding subsections (a) and (b) of this section, the court shall permit the attendance at the proceedings of up to two people designated by the parent of the child, both of whom have participated in a parent ally orientation program approved by the judicial administrator.

(1) Such parent ally orientation program shall include, but not be limited to, information concerning the confidentiality of the proceedings; the child and parent's right to counsel; the definitions and jurisdiction pursuant to the Kansas code for care of children; the types and purposes of the hearings; options for informal supervision and dispositions; placement options; the parents' obligation to financially support the child while the child is in the state's custody; obligations of the secretary of social and rehabilitation services; obligations of entities that contract with the department of social and rehabilitation services for family preservation, foster care and adoption; the termination of parental rights; the procedures for appeals; and the basic rules regarding court procedure.

(2) The court may remove the parent's ally or allies from a proceeding if such ally becomes disruptive in the present proceeding or has been found disruptive in a prior proceeding.”;

Also on page 36, in line 30, by striking “(c)” and inserting “(d)”;

On page 37, in line 32, by striking “proceed-”; in line 33, by striking “ings” and inserting “hearings”;

On page 39, in line 6, by striking “by any party to the proceeding”;

On page 40, in line 19, by striking “The” and inserting “Unless waived by the persons entitled to notice, the”;

On page 41, in line 20, by striking all following the period; by striking all in lines 21 through 29 and inserting “The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that:

(1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety to the child.”;

On page 45, in line 8, preceding the period, by inserting “unless the move is to the selected preadoptive family for the purpose of facilitating adoption”; in line 27, following “child” by inserting “, except for the purpose of adoption.”; in line 31, by striking the colon; by striking all in lines 32 through 38 and inserting “that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety to the child.”;

On page 46, in line 4, preceding “When” by inserting “(a)”; preceding line 22, by inserting new material to read as follows:

“(b) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety to the child.”;

On page 48, in line 41, by striking “of” where it appears the first time and inserting “that”; also in line 41, by striking “parent’s” and inserting “parents have a”;

On page 50, in line 11, preceding “determine” by inserting “hear and the court shall”; in line 20, by striking all following “court”; in line 21, by striking “hearing”;

On page 60, in line 29, preceding “adjudication” by inserting “order of temporary custody.”; also in line 29, by striking all following the comma; in line 30, by striking all preceding “disposition”; also in line 30, preceding “termination” by inserting “finding of unfitness or”; also in line 30, by striking “or order”; in line 31, by striking all preceding the period;

On page 65, in line 13, by striking “2006” and inserting “2007”; in line 14, by striking “2006” and inserting “2007”; in line 17, following “party” by inserting “or an interested party”; in line 21, by striking “2006” and inserting “2007”;

On page 66, in line 29, by striking “2004” and inserting “2005”; in line 38, by striking “2004 Supp.”;

On page 67, in line 4, by striking “2004 Supp.”; in line 18, by striking “2004 Supp.”;

On page 68, in line 27, by striking “2004” and inserting “2005”;

On page 69, in line 27, by striking “2004” and inserting “2005”; in line 39, by striking “2004” and inserting “2005”;

On page 70, in line 39, by striking “2004” and inserting “2005”; in line 43, by striking “2004” and inserting “2005”;

On page 71, in line 11, by striking all after “K.S.A.” where it appears the first time; in line 12, by striking all before “or” where it appears the last time and inserting “60-1607, 60-3105, 60-3106, 60-3107, 60-31a05 or 60-31a06”; by striking all of line 43;

On page 72, by striking all in lines 1 through 25 and inserting the following:

“Sec. 86. K.S.A. 2005 Supp. 21-3843 is hereby amended to read as follows: 21-3843. (a) Violation of a protective order is knowingly or intentionally violating;

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to ~~K.S.A. 38-1542, 38-1543, 38-1563~~ sections 38, 39, 50 and K.S.A. 60-1607, and amendments thereto;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence or postrelease supervision that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

(6) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(b) As used in this section, "order" includes any order issued by a municipal or district court.

(c) Violation of a protective order is a class A person misdemeanor.

(d) This section shall be part of and supplemental to the Kansas criminal code.;

Also on page 72, in line 26, by striking "2004" and inserting "2005";

On page 73, in line 23, by striking "2004" and inserting "2005";

On page 74, in line 12, by striking "2004 Supp.;" in line 22, by striking "2004 Supp.;"

On page 75, in line 11, by striking "2004" and inserting "2005";

On page 98, in line 3, by striking "2004" and inserting "2005";

On page 99, by striking all in line 2 through 29 and inserting the following:

"Sec. 103. K.S.A. 59-2129 is hereby amended to read as follows: 59-2129. (a) Consent to an independent adoption shall be given by: (1) The living parents of the child; or

(2) one of the parents of the child, if the other's consent is found unnecessary under K.S.A. 59-2136, *and amendments thereto*; or

(3) the legal guardian of the child, if both parents are dead or if their consent is found to be unnecessary under K.S.A. 59-2136, *and amendments thereto*; or

(4) the court entering an order under ~~subsection (b)(1)(B) of K.S.A. 38-1584~~ section 65, and amendments thereto; and

(5) the judge of any court having jurisdiction over the child pursuant to the *revised Kansas code for care of children*, if parental rights have not been terminated; and

(6) the child sought to be adopted, if over 14 years of age and of sound intellect.

(b) Consent to an agency adoption shall be given by: (1) The authorized representative of the agency having authority to consent to the adoption of the child; and

(2) the child sought to be adopted, if over 14 years of age and of sound intellect.

(c) The provisions of subsection (a) shall apply to consent in a stepparent adoption, except that subsections (a)(3) and (4) shall not apply.

(d) A consent given by a parent, legal guardian or agency shall be deemed sufficient if in substantial compliance with the form for consent set forth by the judicial council.

(e) A consent given by a legal guardian, judge or agency shall set forth the authority to execute the consent and shall be accompanied by documents supporting that authority.;"

Also on page 99, in line 30, by striking "2004 Supp.;"

On page 101, in line 26, by striking "2004 Supp.;" in line 31, by striking "2004 Supp.;" in line 32, by striking "2004 Supp.;" in line 34, by striking "2004 Supp.;"

On page 103, in line 30, by striking "2004 Supp.;" in line 36, by striking "2004 Supp.;" in line 39, by striking "2004 Supp.;" in line 43, by striking "2004 Supp.;"

On page 104, in line 3, by striking "2004 Supp.;" in line 39, by striking "2004 Supp.;"

On page 110, by striking all in lines 16 through 43;

By striking all on pages 111 through page 115;

On page 116, by striking all in lines 1 through 41 and inserting the following:

"Sec. 108. K.S.A. 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 becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (a)(1)(B), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(2) *Child custody and residency.* (A) *Changes in custody.* Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377,

and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

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

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

(A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(B) In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

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

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

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

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

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

(vi) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

(vii) evidence of spousal abuse;

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) *Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of ~~K.S.A. 38-1502~~ (d)(1), (d)(2) or (d)(3) of section 2, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds the award of custody to such person or agency is in the best interests of the child by written order that: (i) (a) *The child is likely to sustain harm if not immediately removed from the home;*

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

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

(ii) *reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.* In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in ~~K.S.A. 38-1542 and 38-1543~~ sections 38 and 39, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in ~~K.S.A. 38-1531~~ section 29, and amendments thereto, and may request termination of parental rights pursuant to ~~K.S.A. 38-1581~~ section 61, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the revised Kansas code for care of children shall be binding and shall supersede any order under this section.

(b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) a division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. Upon request, the trial court

shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. The decree shall provide for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (B) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(2) *Maintenance.* The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

(3) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time,

support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

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

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

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

On page 117, in line 39, by striking “2004 Supp.”;

On page 118, in line 26, by striking “2004” and inserting “2005”;

On page 124, by striking all in lines 15 through 43;

By striking all on pages 125 and 126;

On page 127, by striking all in lines 1 through 3 and inserting the following:

“Sec. 112. K.S.A. 2005 Supp. 72-962 is hereby amended to read as follows: 72-962. As used in this act:

(a) “School district” means any public school district.

(b) “Board” means the board of education of any school district.

(c) “State board” means the state board of education.

(d) “Department” means the state department of education.

(e) “State institution” means any institution under the jurisdiction of a state agency.

(f) “State agency” means the department of social and rehabilitation services, the department of corrections and the juvenile justice authority.

(g) “Exceptional children” means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto.

(h) “Gifted children” means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined by the state board.

(i) “Special education” means specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child, including:

(1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(2) instruction in physical education.

(j) “Special teacher” means a person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board; or (2) qualified to assist in the provision of special education or related services to exceptional children as determined pursuant to standards established by the state board.

(k) “State plan” means the state plan for special education and related services authorized by this act.

(l) “Agency” means boards and the state agencies.

(m) “Parent” means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

(n) “Person acting as parent” means a person such as a grandparent, stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of ~~K.S.A. 39-1513a~~ *section 13*, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

(p) "Free appropriate public education" means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.

(q) "Federal law" means the individuals with disabilities education act, as amended.

(r) "Individualized education program" or "IEP" means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of K.S.A. 72-987, and amendments thereto.

(s) (1) "Related services" means transportation, and such developmental, corrective, and other supportive services, including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist an exceptional child to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(2) "Related services" shall not mean any medical device that is surgically implanted or the replacement of any such device.

(t) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(u) "Individualized education program team" or "IEP team" means a group of individuals composed of: (1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child.

(v) "Evaluation" means a multisourced and multidisciplinary examination, conducted in accordance with the provisions of K.S.A. 72-986, and amendments thereto, to determine whether a child is an exceptional child.

(w) "Independent educational evaluation" means an examination which is obtained by the parent of an exceptional child and performed by an individual or group of individuals who meet state and local standards to conduct such an examination.

(x) "Elementary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine.

(y) "Secondary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12.

(z) "Children with disabilities" means: (1) Children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic

brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, need special education and related services; and (2) children experiencing one or more developmental delays and, by reason thereof, need special education and related services if such children are ages three through nine.

(aa) "Substantial change in placement" means the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) "Material change in services" means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or a service specified on the IEP of an exceptional child.

(cc) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas, as determined by appropriate diagnostic instruments and procedures, as indicates that special education and related services are required: (1) Physical; (2) cognitive; (3) adaptive behavior; (4) communication; or (5) social or emotional development.

(dd) "Homeless children" means "homeless children and youths" as defined in the federal McKinney-Vento homeless assistance act, 42 U.S.C. 11434a.

(ee) "Limited English proficient" means an individual who meets the qualifications specified in section 9101 of the federal elementary and secondary education act of 1965, as amended.":

On page 131, by striking all in lines 42 and 43;

On page 132, by striking all in lines 1 through 43;

On page 133, by striking all in lines 1 through 16;

And by renumbering the remaining sections accordingly;

Also on page 133, in line 17, by striking "2004" and inserting "2005";

On page 135, in line 11, by striking "2004" and inserting "2005";

On page 138, by striking all in lines 7 through 43;

On page 139, by striking all in lines 1 through 29 and inserting the following:

"Sec. 119. K.S.A. 2005 Supp. 76-729 is hereby amended to read as follows: 76-729. (a)

Persons enrolling at the state educational institutions under the control and supervision of the state board of regents who, if such persons are adults, have been domiciliary residents of the state of Kansas or, if such persons are minors, whose parents have been domiciliary residents of the state of Kansas for at least 12 months prior to enrollment for any term or session at a state educational institution are residents for fee purposes. A person who has been a resident of the state of Kansas for fee purposes and who leaves the state of Kansas to become a resident of another state or country shall retain status as a resident of the state of Kansas for fee purposes if the person returns to domiciliary residency in the state of Kansas within 12 months of departure. All other persons are nonresidents of the state of Kansas for fee purposes.

(b) The state board of regents may authorize the following persons, or any class or classes thereof, and their spouses and dependents to pay an amount equal to resident fees:

(1) Persons who are employees of a state educational institution;

(2) persons who are in military service;

(3) persons who are domiciliary residents of the state, who were in active military service prior to becoming domiciliary residents of the state, who were present in the state for a period of not less than two years during their tenure in active military service, whose domiciliary residence was established in the state within 30 days of discharge or retirement from active military service under honorable conditions, but whose domiciliary residence was not timely enough established to meet the residence duration requirement of subsection (a);

(4) persons having special domestic relations circumstances;

(5) persons who have lost their resident status within six months of enrollment;

(6) persons who are not domiciliary residents of the state, who have graduated from a high school accredited by the state board of education within six months of enrollment, who were domiciliary residents of the state at the time of graduation from high school or within

12 months prior to graduation from high school, and who are entitled to admission at a state educational institution pursuant to K.S.A. 72-116, and amendments thereto;

(7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration requirement of subsection (a), and who are not otherwise eligible for authorization to pay an amount equal to resident fees under this subsection; and

(8) persons who have graduated from a high school accredited by the state board of education within six months of enrollment and who, at the time of graduation from such a high school or while enrolled and in attendance at such a high school prior to graduation therefrom, were dependents of a person in military service within the state; if the person, whose dependent is eligible for authorization to pay an amount equal to resident fees under this provision, does not establish domiciliary residence in the state upon retirement from military service, eligibility of the dependent for authorization to pay an amount equal to resident fees shall lapse.

(c) (1) The state board of regents shall authorize the following class of persons to pay an amount equal to resident fees: Any dependent or spouse of a person in military service who is reassigned from Kansas to another duty station so long as such dependent or spouse continues to reside in Kansas.

(2) So long as a person remains continuously enrolled, exclusive of summer sessions, a person who qualifies to pay resident fees by virtue of being a spouse or dependent of a person in military service shall not lose such status because of a divorce or the death of a spouse.

(d) As used in this section:

(1) "Parents" means and includes natural parents, adoptive parents, stepparents, guardians and custodians.

(2) "Guardian" has the meaning ascribed thereto by K.S.A. 59-3051, and amendments thereto.

(3) "Custodian" means a person, agency or association granted legal custody of a minor under the *revised* Kansas code for care of children.

(4) "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

(5) "Full-time employment" means employment requiring at least 1,500 hours of work per year.

(6) "Dependent" means: (A) A birth child, adopted child or stepchild; or

(B) any child other than the foregoing who is actually dependent in whole or in part on the person in military service and who is related to such individual by marriage or consanguinity.

(7) "Military service" means any active service in any armed service of the United States and any active state or federal service in the Kansas army or air national guard.;

And by renumbering the sections accordingly;

Also on page 139, in line 41, after "59-2129," by inserting "59-3059, 59-3060, 60-452a, 60-460, 60-1610,;" in line 42, by striking "72-962,;" also in line 42, by striking "2004" and inserting "2005";

On page 140, in line 1, after "38-1505," by inserting "38-1513b,;" in line 2, by striking all after "44-817,;" in line 3, by striking "1610,;" also in line 3, by striking "75-4319, 75-4319b,;" and inserting "72-962,;" in line 6, by striking "2006" and inserting "2007"; also in line 6, by striking "it's" and inserting "its";

On page 1, in the title, in line 14, preceding "65-516" by inserting "59-3059, 59-3060, 60-452a, 60-460, 60-1610,;" in line 15, by striking "2004" and inserting "2005"; in line 17, by striking all following "44-817,;" in line 18, by striking "60-1610,;" also in line 18, by striking "75-4319" and inserting "72-962"; in line 30, by striking "2004" and inserting "2005"; also in line 30, preceding "38-1522" by inserting "38-1513b,;" also in line 30, by striking the

comma where it appears for the last time and inserting “and”; in line 31, by striking “and 75-4319b”; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, February 1, 2006.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

