

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

12:00 ~~am~~/p.m. on February 28, 1983 in room 519-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaines, Hein, Hess, Mulich and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Marjorie Van Buren, Office of Judicial Administrator
John Blythe, Kansas Farm Bureau
Jack Paradise, Fathers' Rights, Leawood, Kansas
Jim Robertson, Social and Rehabilitation Services

Senate Bill 314 - Seals of courts.

Marjorie Van Buren appeared in support of the bill and explained it amends K.S.A. 77-201 to provide that a computer-generated seal may be used whenever the official seal of the court is required. A copy of her explanation is attached (See Attachment #1).

John Blythe appeared before the committee to request that they consider amending the bill to include the definition of farming and ranching operations. Mr. Blythe will provide the proposed definition in writing by tomorrow. The chairman cautioned Mr. Blythe that every time this terminology is used anywhere in the statutes the definition in the bill would apply.

Senate Bill 191 - Enforcement of child visitation and custody rights.

Senator Hess, the author of the bill, explained the bill to the committee. He explained the bill was requested by a group representing Fathers' Rights. Discussion was had with the chairman concerning the meaning of the language on page 2, lines 51-55.

Jack Paradise appeared in support of the bill. He testified he supports the sponsor's remarks, and that their group is most interested in two sections of the bill. They support the visitation rights of the bill, and they are in support of the provision concerning removal of children from the state. A copy of his testimony is attached (See Attachment #2). He added that other states have passed similar legislation.

Jim Robertson testified in opposition to the bill. A copy of his testimony is attached (See Attachment #3). He stated the proposed legislation in Subsection (b) (1) has the potential for discounting the fact that child support is a right that belongs to the child, not the custodial parent. During committee discussion, a committee member referred to the word "may" in line 33 of the bill and explained it leaves it up to the authority of the court. Mr. Robertson commented it is his feeling Section (b) (1) could be misinterpreted. The committee member explained this is permissive legislation; not mandatory.

Senate Bill 368 - Crime of interference or aggravated interference with parental custody.

The chairman explained the Family Law Advisory Committee of the Judicial Council had requested such a bill be introduced. Professor Dr. Nancy Maxwell was a member of that committee and had requested the chairman to bring this to the attention of the committee. During committee discussion, a committee member pointed out that the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 12:00 ~~am~~/p.m. on February 28, 1983

Senate Bill 368 continued

basic policy question is that of making this subject a part of the criminal justice system. Another committee member is concerned with impeding the return of the child.

Senate Bill 191 - Enforcement of child visitation and custody rights.

Senator Hess pointed out there are two major problems in domestic relations, and they are non-custodial parents denying visitation and non-custodial parents not paying child support. This legislation has been passed in the state of Missouri last year. Following committee discussion, Senator Hess moved to report the bill favorably; Senator Gaines seconded the motion. Further committee discussion was had. Time for adjournment had arrived, and the chairman announced the motion on the bill would be held until the working session at 3:30 P.M., in Room 531-N, this afternoon.

The meeting adjourned.

2-28-83
noon

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Jim Robertson	Topeka	SRS
Marjorie VanBuren	Topeka	OJA
Jack + Marcie Paradise	Leawood	—
Elizabeth L. Taylor	Topeka	KAEYC + KADVP + IEEE
John Blight	Manhattan	K.F.B.
Jeff Dinger	Lawrence	—
Paul H. H. H.	Lawrence	Staff Steinger
Larry Hines	Lawrence	—
Pat Search	Augusta	—

2-28-83
noon

1

TESTIMONY ON
SENATE BILL 314

Marjorie Van Buren
Office of Judicial Administration
Unified Court System

This bill amends K.S.A. 77-201 to provide that a computer-generated "seal" may be used whenever the official seal of the court is required. This clarification will allow clerks in district courts having computer capability to print rather than manually affix a seal to each court document produced.

Atch. 1

2-287-93
2

February 28, 1983

Testimony of Jack D. Paradise
Office 15285 S. Keeler
Olathe, Kansas 66062
(913) 764-8181

Home 9615 Meadow Lane
Leawood, Kansas 66206
(913) 381-0774

Re: SB 191, Child/parent/grandparent/stepparent relations in divorce

RECENT CASE CITATIONS OF INTEREST

1. Santosky v. Kramer, U. S. Supreme Court, 80-5889, March 24, 1982

"Lassiter (Lassiter v. Dept. of Social Services, 452 U.S. 18, 1981) declared it "plain beyond the need for multiple citation" that a natural parent's "desire for and right to companionship, care, custody, and management of his or her children is an interest far more precious than any property right"

2. Beck v. Beck, 86 N.J. 480 (1981)

"This approach is consonant with the common law policy that "in promoting the child's welfare, the court should strain every effort to attain for the child the affection of both parents rather than one."

"We reject the notion that divorce dissolves the family as well as the marriage....Both the legislation and case law of this state are designed to encourage parent-child interaction following divorce."

3. Dagher v. Dagher, 441 N.Y.S.2d 494 (1981)

"The decision to bear children...entails serious obligations and among them is the duty to protect the child's relationship with both parents even in the event of divorce."

4. Gunter v. Gunter, 418 N.E.2d, 149 (1981)

"..this conduct (removal of child from state) indicated that petitioner placed her children in a secondary position to that of her new husband and career, and supports the trial court's determination to modify custody" (custody changed to father)

Atch. 2

Senate Bill 191

TESTIMONY IN OPPOSITION TO SUBSECTION (b)(1) OF NEW SECTION 1. (lines 0032-0037)

Jim Robertson - Senior Legal Counsel for the Kansas Child Support Enforcement Agency and Kansas URESA Information Agent (Uniform Reciprocal Enforcement of Support Act - K.S.A. 23-451 et seq.) phone number: 296-3410

(b) (1) would allow a court to modify a child support order because of problems in exercising a separate visitation or custody order due to a change of residence or removal of the child from the state (with or without permission of the court). In summary, this section ties support and visitation together so that if visitation is not granted, support could be reduced or terminated.

1. Historically, child support and visitation have been treated by the courts and the legislature as separate issues which should not be dependent on one another. Each have their separate remedies and they should be enforced as separate orders. Subsection (b)(1) is in conflict with existing case and statutory law.

A. The Uniform Reciprocal Enforcement of Support Act (effective in all 50 states and several foreign jurisdictions) was enacted to allow for the establishment and enforcement of support obligations across jurisdictions within a state and across state boundaries. In section 23 of the model code and at K.S.A. 23-472, the act states,

"The determination or enforcement of a duty of support owed to one obligee (i.e. the child) is unaffected by any interference by another obligee (i.e. the mother) with the rights of custody or visitation granted by a court." (examples added)

This existing law distinguishes support, visitation and custody as separate orders. In establishing or enforcing a support order, this act regards only the needs of the child without considering the collateral issues of custody or visitation. For example, a mother could violate a visitation or custody order in Kansas by moving to Colorado and the child could still receive support pursuant to this act. Moreover, undermining the principals of the Act would affect Kansas uniformity.

B. In the case of Patterson v. Patterson (2 Kan. App. 447) referring to the Interstate enforcement of support actions, the Kansas Supreme Court held, "a district judge in a responding state is without jurisdiction to condition disbursement of support payments on visitation rights." In Thompson v. Kite (214 Kan. 700) the court stated "The goal sought by this legislation was to provide a prompt, expeditious way of enforcing the duty of support without getting the parties involved in other complex collateral issues."

C. The intent and spirit of K.S.A. 60-1612 would also be undermined. This section was enacted last year to clearly separate the support and visitation issues.

" If a party fails to comply with a provision of a decree ---, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but the other party may request by motion that the court grant an appropriate order."

If there was a denial of visitation, for example, I would submit that, according to Kansas case law, an "appropriate order" would concern only the visitation issue and have nothing to do with support. (i.e. a motion to establish a specific visitation schedule, a motion for change of custody, a citation for contempt against the custodial parent.)

- 2. Child support has long been recognized as a right that belongs exclusively to the child. The Kansas Supreme Court has held, in a series of cases spanning nearly 50 years, that "the right to support is held to be a chose in action (a personal right) belonging solely to the child. The right cannot be compromised or settled by a parent acting independently." (Myers v. Anderson, 145 Kan. 775; Huss v. Demott, 215 Kan 452).

The verbage in K.S.A. 60-2204 illustrates the Child's right to the support ordered paid.

"whenever a judgment or decree of divorce has been made or subsequently becomes a lien on real property in favor of the minor child or children of the person holding legal title to such real property, the parent, legal guardian, or other person having legal custody of such child or children may release such lien on said real property on behalf of such minor child or children." (emphasis added)

- 3. Too often, courts will inappropriately attempt to use the payment of support as a cohesive lever to force compliance with collateral orders, such as visitation, by depriving the child of support. Subsection (b)(1) of this bill would only encourage such rationale despite the fact that such pressure rarely works. The parent with physical custody may leave the state and obtain a support order pursuant to the URESA; or he or she may obtain ADC public assistance in another state based on the needs of the child. All too often, however, the child is deprived of adequate food, clothing, and shelter by such orders. Moreover, the child suffers without regard to its best interests.
- 4. The current state of the law is sufficient to protect the financial interests of the non-custodial parent with visitation rights.
 - A. Often, the courts will require the custodial parent to pay all or a part of transportation costs as a part of the visitation order (no effect on child support).
 - B. The child support order may currently be modified by a showing of "changed circumstances" regarding the needs of the child and/or the ability of the non-custodial parent to pay support.

In summary, the proposed legislation in subsection (b)(1) has the potential for discounting the fact that child support is a right that belongs to the child - not the custodial parent. It would "open the door" for the courts to substantially reduce or terminate a support order because visitation is not being allowed. The child's rights and needs should not be placed in jeopardy because of a wrongful action taken by its custodial parent. In this case, two wrongs do not make a right. Visitation and support should be treated and enforced as two unrelated issues. Rather than attempting to solve the problems of visitation and custody by taking away a totally unrelated right that belongs to a child, perhaps legislation should be proposed to make the enforcement of such orders more enforceable by providing additional remedies not related to support or by strengthening uniform child custody acts. Granted, a solution to enforcing visitation and custody orders is needed, but not at the expense of the child's health and welfare.