

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 am/p.m. on March 13, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused. Representatives Erne and Duncan were absent.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes' Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Senator Paul Hess  
Gary Petz, Citizen  
Jim Robertson, Kansas Child Support Enforcement Agency, SRS  
Barbara Reinert, Women's Political Caucus  
Senator Merrill Werts  
Marjorie Van Buren, Office of the Judicial Administrator

Hearings were held on SB 191, SB 573, and SB 719.

SB 191 - Enforcement of child visitation and custody rights.

Senator Paul Hess said the bill was heard, amended, and acted upon by the Committee in 1983 but was re-referred. The amended bill is a compromise among himself and other interested parties. It requires that a 21-day notice be given to the non-custodial parent if a child is taken out-of-state by a parent. The original bill required a court order. Senator Hess supported the amended version.

Gary Petz, representing himself, noted the problems he, as a divorced father, has in trying to see his child and the potential of its being taken out-of-state without his knowledge. He supported the bill as giving more balance between parents in divorced situations.

Jim Robertson, Kansas Child Support Enforcement Agency, SRS, gave a statement (Attachment No.1) outlining his opposition to New Section 1 (c) of SB 191. He believed child support and visitation are treated by the courts and legislature as separate issues, and (c) is in conflict with case and statutory law. Staff pointed out there is a new Kansas Supreme Court case, Burnworth v. Hughes, October, 1983, where the court ruled these issues can be linked together.

Barbara Reinert, Women's Political Caucus, said this group supports the amended version of SB 191.

SB 573 - Small estates of disabled persons.

Senator Merrill Werts said the bill was introduced at his request on behalf of a Junction City attorney. It gives the court similar discretion in regard to small estates of the disabled as is given to small estates of minors by allowing guardians or conservators to handle, without bond, up to \$5,000 of a ward's money.

SB 719 - Garnishment form for limited actions.

Marjorie Van Buren, Office of the Judicial Administrator, said the bill was needed to insert the new figures on earnings to the Limited Action form for garnishment which were inadvertently omitted when the form was updated. The figures are set by the Bureau of Labor Statistics. She noted the Senate Committee amended lines 84 and 85 to add "(Check one if applicable)".

The Committee discussed or took action on two bills.

SB 484 - Kansas Parentage Act.

The Chairman said Representative Patrick would form a subcommittee to work on amendments to the bill. Members expressed concern with there being no definition for "interested party" (line 275); the 300 days deadline in line 52; and the definition of "semen donor" needed to track

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 13, 1984.

with the artificial insemination statute. Amendments submitted by Jim Robertson, SRS, (Attachment No.2) should be considered.

Substitute for SB 486 - Adoption procedures and support.

Representative Wagnon moved to report the bill favorably, seconded by Representative Blumenthal. Representative Miller made a substitute motion, seconded by Representative Whiteman, to strike, in line 79, "unusual". He said the word was not defined, was meaningless, and adds an unnecessary burden. The substitute motion carried.

There was discussion regarding the confidentiality of SRS and private agency adoption records. It was noted that Kansas is a progressive state in the area of adoption records being available to an adoptee at the age of majority, and most interim study conferees did not want this changed. Conferees who were adopted expressed a strong desire that the background information in lines 112-114 be required, and the bill was drafted on the premise of the adopted individual's right to know. The bill makes genetic and medical information available if problems arise in these areas. Concern was expressed that SRS could require, through rules and regulations, any information for the file it wished to have.

Amendments suggested by Mr. Barnum, Youth Services Commissioner, (Attachment No.3), were considered. Staff believed the language in the bill was correct and would extend provisions to children who would not otherwise be eligible. No action was taken on the amendments.

Representative Solbach moved to report Substitute SB 486, as amended, favorably, seconded by Representative Wagnon. Representative Vancrum made a substitute motion to amend lines 65-72 to return provisions to those enacted on this issue in 1983, seconded by Representative Patrick. The substitute motion carried. Representative Solbach moved to amend the bill on line 118 to insert, after "secretary", ", licensed social worker", seconded by Representative Miller. Motion carried. Representative Vancrum moved to remove, in New Section 2 (b), the secretary's authority to adopt rules and regulations and to specify what the genetic and medical history records shall include, seconded by Representative Patrick. Motion carried. There was discussion regarding the need to list the births and sexes of siblings. Representative Cloud believed if an adoptee was interested in finding brothers and sisters it would be helpful to have their names. He moved to amend line 113 to read, after the semi-colon, "and the date of birth, sex, and names of any siblings, if known", seconded by Representative Douville. Motion failed to carry.

Representative Vancrum made a conceptual motion to amend lines 43 through 46 regarding the Kansas home state restriction on licensed agencies which he believed should be reciprocal with other states under the uniform parentage act. A member pointed out the House had not passed a similar bill with this provision. Representative Vancrum changed his motion to strike "shall" in line 43 and restore "may", giving the court discretion in the matter and to amend any other sections to conform with this motion. Representative Knopp seconded the motion, and it carried.

Representative Solbach moved to report Substitute SB 486, as amended, favorably, seconded by Representative Knopp. Motion carried.

The meeting was adjourned at 5:10 p.m.

TESTIMONY IN OPPOSITION TO SUBSECTION (C)(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.





Jan 2  
3-13

Attachment # 2

STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ADMINISTRATIVE SERVICES

ROBERT C. HARDER, SECRETARY

STATE OFFICE BUILDING  
TOPEKA, KANSAS 66612

Child Support Enforcement Program  
1st Floor, Perry Building  
2700 West Sixth Street  
Topeka, Kansas 66606  
(913) 296-3410

March 13, 1984

Representative Bob Frey  
Chairman, House Judiciary  
Room 115 S  
Capitol Building  
Topeka, Kansas 66612

Re: S.B. 484 (Kansas Parentage Act)

Dear Representative Frey:

I had the opportunity to testify before the Senate Judiciary Committee concerning some amendments to S.B. 484. Some of these suggestions were incorporated into the bill as amended by the Senate Committee.

The only concern the child support enforcement unit has with the bill in its current form can be found in New Section 16 (lines 0262-0264). The way this section is drafted seems to suggest that a court could modify a judgment. Court orders concerning children can, and often should, be modified. However, judgments in Kansas are considered final unless vacated or set aside for good reason (such as jurisdictional defect). Judgments for child support, for example, come into being when a default in payment occurs. If the court can modify final judgments, it would limit the enforceability of such judgments. If changes in circumstances occur, the court may always prospectively modify the on-going support order. Case law in Kansas does not permit the retroactive modification of support judgments.

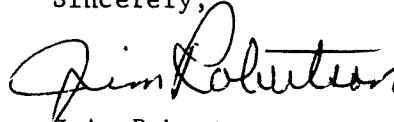
To remedy the problem, I would suggest that new section 16 be amended to read as follows:

"New Sec. 16. Modification of Order. The court has continuing jurisdiction to prospectively modify an order under this act."

Attch. 2

I am sorry I was unable to personally appear for the hearing of S.B. 484 due to illness. Thank you for the opportunity to submit this input after-the-fact.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Robertson".

J.A. Robertson  
CSE Senior Legal Counsel and  
Kansas URESA Information Agent

JAR:va

1. Title

An act concerning adoption, relating to procedures therefore, authorizing adoption support for certain children; amending K.S.A. 59-2278 and repealing the existing section. Attachment # 3

2. Purpose of Bill

Senate Bill 486 requires two things on every adoption filed in the State of Kansas: an assessment and report to the court and secondly, the filing and retention of genetic and medical history on every adopted child.

3. Why of the Bill

As we understand it, the basis for the submission of 486 is to remove the discretionary language regarding assessments and reports to the court on all adoptions, to assure a mechanism whereby all adoption records will be permanently retained and to require that genetic and medical information on the child be obtained and filed with the petition to adopt so that it will be available to the interested parties.

Since the requirement of an assessment on all adoptions is mandatory a provision for SRS to pay for the cost of such an assessment when a family has unusual financial problems has been added, as well as, a provision that makes adoption support available to special needs children not in the custody of the Secretary.

4. Background

This bill was introduced based on concerns expressed by various adoptive parent organizations, special interest groups and some judges concerned that under the current statute assessments on adoptions are not required and there was no provision for permanent adoption record retention. It was also brought to the attention by various groups that adoptive families often have no information on the genetic or health history of their child and no way of obtaining it after the adoption is final. The provision of this bill that such information be filed with the petition is a mechanism to assure the permanent availability of this information. Youth Services has a complete registry on all adoptions up until July 1, 1983. This bill requires that agency again become the repository of such information. There has been some concern expressed that adoption support services are not available to children not in the custody of the Secretary. The bill opens adoption support up to all special needs and minority children adopted in Kansas.

5. Problems with the Bill

Section 1 (e) requires court reports on all non-agency adoptions completed during FY-83 be sent to SRS. In order to more completely comply with the intent of this bill it is recommended that all legal documents should also be sent with the reports of the assessment. (line 0090) The deletion of the phrase "and is not eligible or likely to be placed," (line 0147) would clarify the meaning since it is somewhat contradictory to be "eligible for adoption support" but "is not eligible" for foster care placement.

6. Recommendation

Support with the two changes outlined above.

Robert C. Harder, Secretary  
Office of the Secretary  
Social and Rehabilitation Services  
296-3271  
3-12-84

Atch. 3