

Approved 2/25/85
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~xxx~~ p.m. on January 30, 1985 in room 526-S of the Capitol.

All members were present except:

Representative Adam was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department

Mike Heim, Legislative Research Department

Mary Ann Torrence, Revisor of Statute's Office

Becca Conrad, Secretary

Conferees appearing before the committee:

Brian Moline, Kansas Judicial Council

HB 2012 - Enacting the Kansas Parentage Act.

The Chairman opened the meeting by stating that the first recommendation of the Family Law Advisory Committee is to delete new Section 6, lines 82-105, to avoid the potential conflict that arises here as to paternity in situations involving artificial insemination. The main problem in this area is in lines 102-105 and there was concern about a child in that situation who would not have a father if the mother was not married.

Representative Douville stated that artificial insemination is a developing area of law. He made a motion to delete new Section 6 as recommended by the Family Law Advisory Committee, Attachment No. 1. It was seconded by Representative Walker.

Brian Moline, representing the Kansas Judicial Council, who brought the recommendations before the committee at the first hearing, stated that artificial insemination has nothing to do with the Parentage Act - it was only that the original Uniform Parentage Act suggested this slight change to which artificial insemination laws were more in context with the philosophy of the Parentage Act.

Representative Shriver made a substitute motion to delete new Section 6 and to introduce a committee bill to do that. The motion was seconded by Representative O'Neal.

Representative Duncan requested that the question be divided. The Chairman stated that the motion was in order.

Representative Solbach said that Representative Shriver's motion did the same thing as the original recommendation. The substitute motion of Representative Shriver was ruled out of order.

The Chairman took a vote on Representative Douville's motion to delete Section 6, lines 82-105. The motion carried with 9 in favor and 8 against.

Representative Luzzati made a motion to introduce a bill that addresses the problem of Section 6. Representative Whiteman seconded the motion. A vote was taken and the motion carried.

The Chairman stated that the second recommendation of the Family Law Advisory Committee provides for an addition in lines 107 - 111 on page 3 of Section 7, as stated on Attachment No. 1. The Chairman explained that the presumptions under (a) of Subsection 5 are very strong presumptions and it was the feeling that those presumptions should be allowed to continue for a much longer time and not terminate. Mr. Moline said the question becomes, "should there be any cut-off date to bring action in the relationship". He said there is a strong presumption that the rights should transcend through the death of the father.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~xxxx~~ a.m./p.m. on January 30, 1985

Representative Douville asked if the presumption continued after the death of the father, couldn't that have an effect on the estate.

The Chairman brought up the point that under the current law the child has until they reach the age of 21 to bring these actions and the proposed amendment says they are going to allow that to continue for as long as the child is alive. He also said that four presumptions were necessary for the child to raise the paternity issue and they are as follows: 1.) the father and child's mother had been married within 300 days; 2.) if the father and mother had attempted to marry; 3.) if they had a voidable marriage; and 4.) where the father notoriously in writing recognized his paternity to the child (for more than three years as the child turns 18).

Representative Duncan moved and Representative Solbach seconded the adoption of this amendment.

Representative Snowbarger referred to line 208, page 6, and wondered if a 40 year old man could get child support. Representative Duncan wondered why a person shouldn't have a right to an estate if it was discovered later in their life.

Representative Douville stated that the reason for the statute of limitations is that if too much time passes, then it is very difficult to get the truth.

Brian Moline named the three situations where there is a strong presumption for support of a child past 18 years of age as follows: 1.) incapacitated child; 2.) estate situation where father dies; 3.) somebody discovers the parent-child relationship ten years after the death of the father.

Representative Whiteman pointed out on page 3, lines 116-119, that it doesn't extend the time to determine heirship.

Representative Wunsch was concerned about what this would do to a title on the sale of property.

Mr. Moline said that the whole point of the language is to try to keep the father and mother, by contract between themselves, from barring the rights of the child.

Representative Douville had concerns about how it would effect a trust.

Representative O'Neal said he wasn't so concerned about the death issue as he was about a situation where there is a birth, no marriage, consent of the father on a birth certificate, later a marriage by mother to another man, death of the husband, the mother becomes destitute and the mother sees a way to bring another father into the picture. Since under this amendment the mother has any length of time to bring an action, he wondered what protection there would be to the father who consented to have his name put on the birth certificate.

The Chairman stated they should focus on what the statute of limitations ought to be for bringing an action to establish paternity. He said that present law says that it shall be three years from the age of majority. The opposed amendment says that it shall be at any time. The Chairman pointed out that there are variations that could be upheld, such as, until the death of the father where that action ceases after the death of the father so you don't get into the opportunity to make a claim against the State after the father is dead.

Representative Douville asked what the purpose is to extend the statute of limitations past the time the child reaches the age of 18. Mr. Moline stated the three previous situations he gave were the reasons.

Representative Bideau thought a decision should be made that those type of things don't go on forever.

Representative Duncan's motion to adopt the amendment on Section 7 was voted on and carried 9 to 8. Representative Douville wanted to be recorded as voting "no" because he feels it creates problems with the bill.

Representative Shriver felt that Section 4 should be taken out.

CONTINUATION SHEET

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The Chairman stated that the motion is that new Section 7 and the amendment that was just adopted states that paternity may be determined at any time if the presumption exists under Section 5 (a) 1, 2 and 3.

Representative Shriver and Representaive Duncan suggested eliminating Section 4 because it is a restatement of something already covered.

The Chairman stated that the committee amendment they had just adopted says that paternity may be established at any time to determine the existence of the father if the father-child relationship is presumed under Subsection A of Section 5. He said if you look at new Section 5 and A, you will notice that it has four parts 1, 2, 3 and 4. He said that what he thinks Representative Bideau is saying is that they would extend that statute of limitations to an unlimited time if 1, 2 or 3 exist but not as to 4.

Representative Snowbarger had questions on Section 13. In line 208 where it says "the court shall order", he wondered if it shouldn't be changed to "may" because it requires the court to enter a support order when the circumstances may not justify it at that point in time. Representative Snowbarger also thought in line 209 that the sexist language should be taken out. Representative Snowbarger moved that "father" be taken out of line 207 and replaced with "parent" and he also moved to take "mother" out entirely in line 209 of New Seciton 13. Representative Bideau seconded the motion. The motion carried.

Representative Cloud moved that in line 208, New Section 13, that "shall" be changed to "may". Representative O'Neal seconded the motion.

Representative Cloud wondered if "shall" was changed to "may" that opened up the possibility that the court would not require a parent to take care of an eight year old child (as related to the discussion of a 40 year old child).

Brian Moline referred everyone to (e) of New Section 13 and said that it gives the court the discretion in making the reimbursements. He said it is the intent of the act that the court have the discretion if a child should want support later in life and that the order should be mandatory if taken place earlier in life.

Representative Whiteman said she prefers the "shall".

Representative Buehler wondered how much education the court should order and when would it stop. Representative Knopp referred him to (e) 1-9 of New Section 13 and specifically number 5. He thought it would be within the discretion of the court to decide what would be appropriate.

Brian Moline stated the the obligation of support can extend past age 18 depending upon the circumstances. He said not to confuse the duty with the amount.

Representative Cloud said he had no problem with the limit of age 18 and how much responsibility the parent has, as tied in with the current divorce laws; but what he doesn't want to do is to change the mandatory provision for providing that support for kids under 18.

Representative Solbach made a substitute motion to tie the language in Subsection C, lines 207 - 219, with that found in K.S.A. 60-1610 relating to divorce. It was seconded by Representative Vancrum. The motion carried.

A motion was made and seconded to delete "including higher education" in New Section 13, line 235. The motion carried.

Representative Vancrum made a motion on Section 13 but it was withdrawn.

The Chairman brought up the question on New Section 17 about requirement of indigency for appointment of counsel for the mother (if the mother is indigent). It was moved by Representative Bideau and seconded by Representative Roy that the requirement be that the county or district attorney should represent the petitioner in an action if the court finds the petitioner indigent. The amendment did not carry.

CONTINUATION SHEET

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Representative Solbach pointed out that there is no provision for nullifying New Section 19 if a man naively signs for some kind of child support agreement if he in fact is not the father. He thinks there should be some consideration for this circumstance.

Representative Solbach moved that Section 19 be deleted. Representative Shriver wondered if they couldn't just change "shall" to "may" in line 285. Representative Solbach said that if "may" was put in, the court would not need to be told that it may be enforceable according to its terms. He said it should be left up to the court to decide whether or not there would be consideration. He said if it is changed to "may", the section is not needed.

Representative Vancrum said the purpose of this section and the other section Representative O'Neal referred to is recognizing the rights of the child. He wondered what harm there would be in enforcing this without consideration.

Representative Solbach said the other thing that bothered him in Section 19 is what would happen if the agreement to provide support is grossly inadequate and is far less than what a court would order. Brian Moline stated that he was confusing the duty with the amount of which is determined in New Section 13 (e).

Representative Solbach moved that New Section 19 be deleted. It was seconded by Representative O'Neal. The motion carried 8 to 7.

Representative Snowbarger made a motion that there should be a minimum publication notice and an attorney should be appointed in New Section 21, 5 (e) and (f). It was seconded by Representative Douville and carried.

Representative O'Neal made a motion in New Section 7 (d) that there should be no agreement between the father and mother to prohibit the child from bringing an action. It was seconded by Representative Douville.

Representative Solbach asked if that wasn't taken care of with the current language. He wondered if a child could bring an action under this section if there is no agreement between the father and the mother.

Representative O'Neal explained that if it was the intent to not have a situation where a child is barred from action, this section goes too far. It would allow a mother to enter into an agreement and then ignore it, notwithstanding that agreement. His amendment would tighten it down so that the mother would be precluded from the action but the child would not.

Mary Torrence, Revisor's office, pointed out that a child cannot file an action until the age of majority.

Representative Walker wondered if section (a) did not cover that. Representative O'Neal withdrew his motion.

Representative Bideau moved in New Section 15, lines 257-258, to leave out "mother". Representative Teagarden seconded it. Representative Solbach wondered if that wasn't a matter of local rule rather than state statute in divorce proceedings. The motion carried.

Representative Duncan moved that the bill on the whole be passed and Representative Buehler seconded. The motion carried.

The meeting was adjourned at 5:20.

RECOMMENDATIONS OF THE FAMILY LAW
ADVISORY COMMITTEE ON 1985 H. B. 2012

1. Delete § 6, lines 82 - 105, and remove K.S.A. 23-128 through 23-130 from the repealer.
2. Amend subsection (a) of § 7 on page 3, lines 107 - 111, to read:

(a) A child whose paternity has not been determined, or any person on behalf of such a child, may bring an action

(1) at any time to determine the existence of a father and child relationship presumed under subsection (a) of section 5; or

(2) at any time until three years after the child reaches the age of majority to determine the existence of ~~the~~ a father and child relationship which is not presumed under subsection (a) of section 5.

Attachment No. 1
House Judiciary
January 30, 1985