

Approved April 1, 1986  
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at  
Chairperson

3:30 ~~am~~/p.m. on February 24, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Adam, Fuller, Harper, Luzzati and Teagarden were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Bob Barnum, Department of Social and Rehabilitation Services  
Jim Robertson, Department of Social and Rehabilitation Services  
Judge Davis, Leavenworth County District Court  
Terry Showalter, Wyandotte County Juvenile Department  
Marjorie Van Buren, Judicial Administrator's Office

Mary Torrence announced that there have been three requests for bills from the committee. They are: 1) a request for a committee bill to clean up all references in the statutes making associate district judges district judges; 2) allowing traffic citations to be issued for some offenses such as driving with an open container, which are not Chapter 8 offenses; and 3) a cleanup of the juvenile code sections dealing with traffic offenses. Rep. Shriver moved to approve the request for the bill dealing with district judges. Seconded by Rep. Walker. Motion carried on a voice vote. Rep. Walker moved to approve the request dealing with traffic offenses which are not Chapter 8 offenses. Seconded by Rep. Buehler. Motion carried on a voice vote. Rep. Walker moved to approve the request concerning the juvenile code. Seconded by Rep. Buehler. Motion carried on a voice vote.

The Chairman announced that the Secretary of State's office had requested a committee bill conforming the Kansas corporation code to the Delaware corporation code. Rep. Buehler moved that the request be approved. Seconded by Rep. Cloud. Motion carried on a voice vote.

HB 2874 - An act concerning the Kansas code for care of children; relating to issuance of restraining orders against perpetrators of abuse in lieu of removing children from their homes because of abuse.

Bob Barnum of the Department of Social and Rehabilitation Services appeared before the committee in support of HB 2874. (Attachment #1) He said that the SRS position in general is to deal with families in the most inobtrusive way possible to enable the family to get on with its daily life; however, in some instances this is not possible and the judges need a tool to use as an alternative to removing children from the home. It is SRS' position that the best interests of the child is served in not removing it from the home but removing the alleged perpetrator in sexual abuse cases instead. He said if the perpetrator moves out, the family and the child can get on with its daily life more easily. This would provide another alternative to foster care. He stated the judges have a concern about the present wording of the bill and feel that the word "shall" in line 25 mandates that this alternative would have to be given preference to all other actions. The judges do not want to be mandated into using this alternative before all others. For that reason SRS proposes the amendment found in Attachment 2. Mr. Barnum did not have a fiscal report but feels it would be a minimal amount. Rep. Shriver suggested that "shall" in line 25 could remain and line 25 could be changed by adding "shall give preference". Mr. Barnum said that would be acceptable to SRS.

Judge Davis of Leavenworth appeared before the committee in support of HB 2874. He said this bill would give judges the proper tool to keep on top of this situation. Live-in boyfriends sometimes present a problem in this situation and this bill would give the judges another way to monitor the situation and remove the perpetrator and not the child. This alternative is sometimes used now but this would give the court the statutory authority to do so.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,  
room 313-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on February 24, 19 86

Terry Showalter, Director of the Wyandotte County Juvenile Department appeared before the committee (Attachment 3). He said he and Judge Mikesic of the Wyandotte County District Court had a concern about the wording referred to by Mr. Barnum and felt this bill would mandate this option before all others. He said his concerns were alleviated by Mr. Barnum's amendment and Mr. Shriver's previous suggestion. He said it had been his court's experience that the family would not support orders of this type.

Rep. Bideau made a conceptual motion to include this alternative in the laundry list of dispositional alternatives in the Code for Care of Children. Seconded by Rep. O'Neal. Motion carried on a voice vote.

Rep. Duncan moved to set the penalty provisions of this bill in a separate criminal section. Seconded by Rep. Cloud. Motion carried on a voice vote. Rep. Buehler moved to report HB 2874 as amended favorable for passage. Seconded by Rep. O'Neal. Motion carried on a voice vote.

HB 2873 - An act concerning the Kansas code for care of children; relating to the removal of children from the custody of their parents.

Bob Barnum appeared before the committee in support of HB 2873. He said passage of this bill will assure continued federal funding. The fiscal shortfall without this bill will be approximately \$6 million. The federal requirements include a judicial determination that reasonable efforts were made to prevent removal of the child prior to the removal or a judicial determination that an emergency exists. He said that this will statutorily require the judicial determination and will provide language in the code necessary because of the high turnover in prosecutors' offices. (Attachment 4)

Marjorie Van Buren appeared before the committee in support of HB 2873. She said it should be amended to make sure testimony is presented.

Rep. Bideau made a conceptual motion to include this language in the laundry list of dispositional alternatives in the Code for Care of Children. Seconded by Rep. Duncan. Motion carried on a voice vote. Rep. Buehler moved to report HB 2873 as amended favorable for passage. Seconded by Rep. Bideau. Motion carried on a voice vote.

HB 2775 - An act concerning parentage proceedings.

Rep. Whiteman stated that this bill changes section 38-1117 of the Kansas Parentage Act by not requiring a guardian ad litem to be appointed in every case but leaving it to the discretion of the court. She said many times the interests of the child and mother are the same, the majority of cases being to determine child support obligations. Requiring a guardian ad litem in every case creates a negative fiscal impact which HB 2775 would alleviate.

Jim Robertson of SRS appeared before the committee in opposition to HB 2775. He said the Kansas Parentage Act established the guardian ad litem to protect the child's rights. This is the only way the child's rights are protected and passage of HB 2775 would be a step backward. (Attachment 5). He said he agreed with Rep. Whiteman when the parentage is uncontested and in that regard he offered an amendment (Attachment 6) waiving the appointment if parentage is uncontested. Mr. Robertson said where parentage is contested the rights of the mother and child are not the same and often the mother will "sell out" on a parentage determination for a few hundred or thousand dollars. Rep. Whiteman moved to amend HB 2775 incorporating the SRS amendment and also indicating "upon motion and if the court finds that the interests of the parties are different". Seconded by Rep. Shriver. Motion carried on a voice vote. Rep. Whiteman moved to report HB 2775 as amended favorable for passage. Seconded by Rep. Walker. Motion carried on a voice vote.

The Chairman announced tomorrow's meeting will be held in room 519-S. The meeting adjourned at 5:00 P.M.

in the child's home, visiting, contacting, harassing or intimidating the child..."

3. It does not require action on the part of a household member or parent and thus takes the onus from the family of having to initiate an action that requires making a choice between the child and other members of the family.

Often family members are too frightened or too immobilized to make clear decisions and to take action on these decisions.

4. Effect of Passage

This amendment will provide the court with another option to protect children from further harm. It could have a positive effect in reducing the number of children in SRS custody and will have a positive effect on the number of children who are placed in emergency and temporary foster care.

5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder  
Office of the Secretary  
Social and Rehabilitation Services  
296-3271

February 24, 1986

**HOUSE BILL No. 2874**

By Committee on Judiciary

2-7

Attachment 2  
House Judiciary  
February 24, 1986

0017 AN ACT concerning the Kansas code for care of children; relat-  
0018 ing to issuance of restraining orders against perpetrators of  
0019 abuse in lieu of removing children from their homes because  
0020 of abuse.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. (a) Prior to entering an order to remove a child  
0023 from custody of a parent under the Kansas code for care of  
0024 children because of physical, sexual, mental or emotional abuse,  
0025 the court, as an alternative to such removal, ~~shall~~ first consider <sup>may</sup>  
0026 and give preference to entering an order restraining the alleged  
0027 perpetrator of the abuse from residing in the child's home;  
0028 visiting, contacting, harassing or intimidating the child; or at-  
0029 tempting to visit, contact, harass or intimidate the child. |-----

The determination to remove the child or the perpetrator shall be on the basis of which alternative serves the best interest of the child.

0030 (b) A willful violation of any court order entered pursuant to  
0031 subsection (a) is a class A misdemeanor.

0032 (c) This section shall be part of and supplemental to the  
0033 Kansas code for care of children.

0034 Sec. 2. This act shall take effect and be in force from and  
0035 after its publication in the statute book.

TERRY D. SHOWALTER  
Department Director



SECTION SUPERVISORS  
Gene R. Daugherty  
Offender Section  
Linda J. Hobbs  
Child in Need of Care Section  
Evelyn L. Powell  
Administrative Services Section  
Harold A. Schreiber, Jr.  
Diversion Unit Supervisor

GWENDOLYN S. CHAMBERS  
Clerical Supervisor

**THE DISTRICT COURT OF WYANDOTTE COUNTY  
JUVENILE DEPARTMENT**

607 TAUROMEE  
KANSAS CITY, KANSAS 66101  
913/321-9700

February 24, 1986

TO: HOUSE JUDICIARY COMMITTEE  
FROM: JUVENILE DEPARTMENT/DISTRICT COURT OF WYANDOTTE COUNTY  
RE: HOUSE BILL 2874

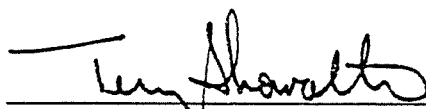
Regarding HB 2874, we support having the option of restraining the perpetrator from the home to prevent removal of the child, but we oppose some language in the Bill which seems to create a mandate to use that alternative.


Our concerns are:

1. There is no mechanism in place or staff time to assure enforcement of any restraining order. Our experience tells us that this will not come from the family.
2. Further damage can occur to the victim if left in an unsupportive family environment.
3. There is not sufficient time in the first 48 hours of a case to develop the information necessary to make a determination of when this option is safe and even to determine who the actual perpetrator is.
4. No assessment of the impact of this Bill has been done.
5. The legal mechanisms for the use of this restraining order are not clear. This includes the time frames, limits of restrictions, frequency of re-hearings, etc.

We, therefore, would respectfully ask that the Bill be amended to change the word "shall" on line 0025 to "may" and to delete the words "and give preference to" on line 0026.

Thank you very much for your consideration of this position.

  
Terry D. Showalter  
Department Director

  
David P. Mikesic  
Associate District Judge

Attachment 3  
House Judiciary  
February 24, 1986

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding H.B. 2873

1. Title

An Act concerning the Kansas Code for Care of Children relating to the removal of children from the custody of their parents.

2. Purpose

This change in the Kansas Code for Care of Children would clarify that prior to removing a child from the home, there must be a judicial determination that reasonable efforts to prevent the removal were made, or the removal is due to an emergency.

3. Background

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) requires that a state must be able to demonstrate that "reasonable efforts" to prevent or eliminate the need for removal of a child from the home have been made in order for the child's foster care payment to be eligible for federal financial participation.

Approximately \$6 million in federal foster care and child welfare funds are received by Kansas each year and are in jeopardy if this requirement is not met.

SRS is concerned that when the State is reviewed for compliance with the regulations of P.L. 96-272, it may be determined to be "out of compliance" if a significant percentage of the cases reviewed do not confirm agency effort. This would jeopardize the \$6 million in federal foster care/child welfare funds that Kansas currently receives for foster care and adoption assistance services for children. The federal Department of Health and Human Services (HHS) has given SRS a preliminary policy interpretation that evidence of compliance should include the court's acknowledgment in its removal order that "reasonable efforts" were made to prevent or eliminate the need for removal and to make it possible for the child to return to his home.

4. Effect of Passage

Passage of this legislation will clarify the court's responsibility regarding judicial determination and assist SRS in remaining eligible for receipt of federal foster care funds.

5. SRS Recommendation

SRS recommends passage.

Robert C. Harder, Secretary  
Office of the Secretary  
Social & Rehabilitation Services  
296-3271

February 24, 1986

Attachment 4 - House Judiciary

February 24, 1986

# HOUSE BILL No. 2873

By Committee on Judiciary

2-7

0017 AN ACT concerning the Kansas code for care of children; relat-  
0018 ing to the removal of children from the custody of their  
0019 parents.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. ~~(a)~~ Prior to entering an order removing a child  
0022 from the custody of a parent under the Kansas code for care of  
0023 children, the court shall find that reasonable efforts have been  
0024 made to prevent or eliminate the need for removal of the child or  
0025 that an emergency exists which threatens the safety of the child  
0026 and requires the immediate removal of the child. Such findings  
0027 shall be included in any order entered by the court.

0028 ~~(b)~~ This section shall be part of and supplemental to the  
0029 Kansas code for care of children.

0030 Sec. 2. This act shall take effect and be in force from and  
0031 after its publication in the statute book.

(a) Whenever a petitioner requests the court to enter an order removing a child from the custody of a parent under the Kansas code for care of children, the petitioner at the appropriate time shall present evidence to the court that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child.

(b)

(c)

TESTIMONY Re: H.B. 2775

Submitted by: J.A. Robertson  
CSE Senior Legal Counsel  
Department of Social and Rehabilitation Services

Social and Rehabilitation Services opposes H.B. 2775 as drafted because we feel its implementation would be a step backward in the evolution of children's rights and because such a provision would increase the disparity of protection from jurisdiction to jurisdiction. The Uniform Parentage Act and the Kansas Parentage Act in its current form were enacted after giving careful thought to the protection of children's interests. One of the essential ingredients of this protection is to require the courts to provide a guardian ad litem to represent solely the child's interests in actions to determine parentage.

The Child Support Enforcement Unit of SRS files hundreds of paternity cases yearly. It has become apparent to us that in many of these cases the interests of the child and of the child's mother are adverse. All too often, mothers of children attempt to waive legal action to determine parentage in return for a few hundred or a few thousand dollars. In such instances, a child's right to receive periodic support throughout the age of minority are severely prejudiced.

Social and Rehabilitation also submits, that if the appointment of a guardian ad litem to represent a child's interests is left totally to the discretion of judges, a guardian ad litem will seldom, if ever, be appointed. Over the last eight years, SRS has filed thousands of paternity cases pursuant to K.S.A. 39-755 which contains a provision to allow the judge hearing the case to appoint attorneys to represent the interests of a child or other parties to the action if deemed necessary. To my knowledge, no judge has ever appointed an attorney to represent a child's interests in any of these cases.

The Child Support Enforcement Unit of SRS does feel strongly that the current law should be amended as suggested in the attached balloon so that a guardian ad litem need not be appointed if the parentage of the child is uncontested. 75% to 80% of all paternity cases filed by CSE are ultimately resolved by some form of stipulation. Consequently, if this change were made, the need to appoint guardian ad litem would be significantly reduced in a large number of cases.



## HOUSE BILL No. 2775

By Representative Whiteman

1-29

0017 AN ACT concerning parentage proceedings; amending K.S.A.  
0018 1985 Supp. 38-1117 and repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1985 Supp. 38-1117 is hereby amended to  
0021 read as follows: 38-1117. The child shall be made a party to an  
0022 action brought under this act. ~~The court may appoint an attorney~~  
0023 ~~as guardian ad litem to represent the minor child shall be~~  
0024 ~~represented by a guardian ad litem who shall be an attorney~~  
0025 ~~appointed by the court.~~ The mother, each man presumed to be  
0026 the father under K.S.A. 1985 Supp. 38-1114 and amendments  
0027 thereto and each man alleged to be the father shall be made  
0028 parties or, if not subject to the jurisdiction of the court, shall be  
0029 given notice of the action in a manner prescribed by the court  
0030 and shall be afforded the opportunity to be heard. If a man  
0031 alleged or presumed to be the father is a minor, the court shall  
0032 cause notice of the pendency of the proceedings and copies of  
0033 the pleadings on file to be served upon the parents or guardian of  
0034 the minor and shall appoint a guardian ad litem who shall be an  
0035 attorney to represent the minor in the proceedings. If the parents  
0036 or guardian of the minor cannot be found, notice shall be served  
0037 in the manner directed by the court.

0038 Sec. 2. K.S.A. 1985 Supp. 38-1117 is hereby repealed.

0039 Sec. 3. This act shall take effect and be in force from and  
0040 after its publication in the statute book.

Unless the parentage of the child is uncontested, the  
minor child shall be represented by a guardian ad litem  
who shall be an attorney appointed by the court.