

Approved March 3, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m. ~~pm~~ on February 17, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Dr. Richard Maxfield, Kansas Psychological Association
Judge James Buchele, District Court, Shawnee County
Mike Engstrom, Fathers Demanding Equal Justice
Representative Joan Wagnon
Marjorie Van Buren, Office of Judicial Administrator

Senate Bill 533 - Factors in determining child's custody or residency in domestic actions.

Dr. Richard Maxfield, Kansas Psychological Association, appeared in support of the intent of the additional proposed criterion contained in the bill. He stated one of the clearest findings in the research on divorce is that the child's maintaining a relationship with both of his or her parents is likely to mitigate against some of the harmful effects of divorce, and he believes the intent of this new criterion speaks to that finding. Dr. Maxfield explained his proposed amendment that appears on the balloon copy he distributed (See Attachment I).

Judge James Buchele was recognized to comment on the bill. He stated he didn't have any serious problems with the proposal of Dr. Maxfield's. It gives lawyers notice to advise their clients relative to custody materials.

Mike Engstrom, Fathers Demanding Equal Justice, appeared in support of the bill and in support of Judge Buchele's remarks. He stated children of second marriages are financially handicapped due to father having to pay support. He feels it puts a hardship on the children of the second marriage when they have to pay financial support for the children of the first marriage. He said if a child is being parented by a promiscuous lifestyle, that should be taken into consideration, when custody and support are being considered.

Senate Bill 535 - Expedited process for enforcement child visitation orders.

Representative Joan Wagnon explained the bill originated from the child support commission that held a series of hearings across the state to deal with statewide guidelines for the recurring problem of child visitation. The subcommittee came up with the concept of the expedited process in dealing with child visitation rights and they believe this provides fairness. She said Kansas

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m.~~p.m.~~ on February 17, 1986

Senate Bill 535 continued

is the only state that has a bill like this. Following explanation of the bill, considerable committee discussion was held.

Marjorie Van Buren, Office of Judicial Administrator, explained they do have some districts that put mediation time into their budget. She said some districts are having mediation time in local mental health centers which according to scale makes it less expensive. She explained their proposed amendment (See Attachment II). She also pointed out on page 1, line 40, subsection (e) should be subsection (f).

Mike Engstrom, Fathers Demanding Equal Justice, testified he is speaking from a personal experience. He feels grandparents visitation rights should be honored. He referred to language in the bill on page 7, line 234; that grandparents and stepparents may be granted visitation rights, and he would like to see, will be granted visitation rights. The chairman explained the language is may be granted visitation rights because, if it is changed to shall be granted, the court has to grant visitation rights whether grandparents requested it or not. Mr. Engstrom said he feels it is just as important for the children to see the grandparents as their father.

Judge James Buchele stated the expedited process is something that he has been doing in Topeka for about six months. His experience is these hearings take about 10 or 15 minutes, and often he finds it was a misunderstanding. Judge Buchele pointed out in line 40, page 1, subsection (e) should be subsection (f). In line 79, page 2, assessment of attorneys fees, he proposed if the court does assess the cost of mediation, it should say that in the bill. Mediation is expensive and people don't go into mediation without lawyers. He said if mediation is to be successful, we need to use our CSOs.

The meeting adjourned.

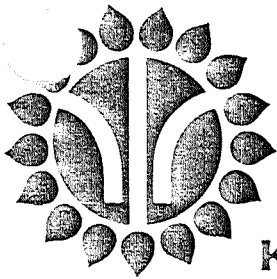
A copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-17-86

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|--------------------------|-------------------|----------------------------------|
| Michael Engstrom | 118 Terra Drive | FATHERS DEMANDING EQUAL JUSTICE. |
| Kent E. GARDNER | 205 Heights Rd. | FATHERS Demanding Equal Justice |
| Jim Robertson | Topeka | SRS / OSE |
| Paul Kates | Topeka | OJA |
| Ray Billosimo | Topeka | OSA |
| Richard Mapfied | Topeka | K's Psych Assoc. |
| Blareni West | RR2 Lebo | Concerned Citizens |
| Marjorie Van Buren | Topeka | OJA |
| Jim Buehler | Topeka | Director Judge |
| Jan Waggoner | Topeka | JUST |
| JIM SULLIVAN | TOPEKA | KMCDA |
| Anne Moriarty | " | K's Nat'l Org. for Women |
| Walt Scott | " | AAACR Bureau |
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KANSAS PSYCHOLOGICAL ASSOCIATION

February 17, 1986

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Executive Officer
Lawrence, KS

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify on Senate Bill 533. I am Dr. Richard Maxfield. I am the Chief Psychologist of the Adult Diagnostic and Consultation Service of the Menninger Foundation and I am here today on behalf of the Kansas Psychological Association.

Three years ago this Committee considered eight additional criteria for the court to consider when making custody determinations. At that time I opposed those additions as they were unsupported by the psychological research on the effects which divorce has on children. I am here today in support of the intent of the additional proposed criterion contained in Senate Bill 533.

One of the clearest findings in the research on divorce is that the child's maintaining a relationship with both of his or her parents is likely to mitigate against some of the harmful effects of divorce and I believe the intent of this new criterion speaks to that finding. I would, however, suggest for your consideration language which more closely matches the research findings. I have distributed a balloon of Page 2 of this Bill which contains that proposed language.

I believe that this language represents a minimum standard which the research suggests increases the likelihood of a more successful outcome for the children of divorce. The language contained in the current Bill reflects, I believe, an ideal to be striven for. And, many parents may not be able to reach that ideal, especially at the time of the divorce. I would be happy to attempt to answer any questions the Committee may have.

Atch. I
s. Judiciary 2/17/86

0046 (2) *Child custody. (A) Changes.* Subject to the provisions of
0047 the uniform child custody jurisdiction act (K.S.A. 38-1301 *et seq.*
0048 and amendments thereto), the court may change or modify any
0049 prior order of custody when a material change of circumstances
0050 is shown.

0051 (B) *Examination of parties.* The court may order physical or
0052 mental examinations of the parties if requested pursuant to
0053 K.S.A. 60-235 and amendments thereto.

0054 (3) *Child custody or residency criteria.* The court shall de-
0055 termine custody *or residency of a child* in accordance with the
0056 best interests of the child.

0057 (A) If the parties have a written agreement concerning the
0058 custody *or residency* of their minor child, it is presumed that the
0059 agreement is in the best interests of the child. This presumption
0060 may be overcome and the court may make a different order if the
0061 court makes specific findings of fact stating why the agreement is
0062 not in the best interests of the child.

0063 (B) In determining the issue of custody *or residency of a*
0064 *child*, the court shall consider all relevant factors, including but
0065 not limited to:

0066 (i) The length of time that the child has been under the actual
0067 care and control of any person other than a parent and the
0068 circumstances relating thereto;

0069 (ii) the desires of the child's parents as to custody *or resi-*
0070 *dency*;

0071 (iii) the desires of the child as to the child's ~~eustodian cus-~~
0072 *tody or residency*;

0073 (iv) the interaction and interrelationship of the child with
0074 parents, siblings and any other person who may significantly
0075 affect the child's best interests; ~~and~~

0076 (v) the child's adjustment to the child's home, school and
0077 community; *and*

0078 (vi) *the willingness and ability of each parent to facilitate*
0079 ~~and encourage a close and continuing relationship between the~~
0080 *child and the other parent.*

0081 Neither parent shall be considered to have a vested interest in
0082 the custody of any child as against the other parent, regardless of

respect and appreciate the bond

and to allow for a continuing relationship between
the child and the other parent.

Attch. I

0046 understanding to the hearing officer within five days after it is
0047 signed by the parties. Upon receipt of the summary, the hearing
0048 officer shall set a time and place for a hearing on the matter,
0049 which shall be not more than 10 days after the summary is
0050 received by the hearing officer.

0051 (d) If mediation ordered pursuant to subsection (b) is termi-
0052 nated pursuant to K.S.A. 1985 Supp. 23-604 and amendments
0053 thereto, the mediator shall report the termination to the hearing
0054 officer within five days after the termination. Upon receipt of the
0055 report, if the hearing officer is a district or associate district
0056 judge, such judge shall set the matter for hearing. If the hearing
0057 officer is a district magistrate judge or a court trustee, the ad-
0058 ministrative judge shall assign the matter to a district or associate
0059 district judge who shall set the matter for hearing. Any such
0060 hearing shall be not more than 10 days after the mediator's report
0061 of termination is received by the hearing officer.

0062 (e) ~~The clerk of the district court shall notify all interested~~
0063 ~~parties by certified mail, return receipt requested, of the time~~
0064 ~~and place of any hearing to be held pursuant to this section.~~

0065 (f) If, upon a hearing pursuant to subsection (b), (c) or (d), the
0066 hearing officer or judge finds that visitation rights of one parent
0067 have been unreasonably denied or interfered with by the other
0068 parent, the hearing officer or judge may enter an order providing
0069 for one or more of the following:

- 0070 (1) A specific visitation schedule;
- 0071 (2) compensating visitation time for the visitation denied or
0072 interfered with, which time shall be of the same type (e.g.,
0073 holiday, weekday, weekend, summer) as that denied or inter-
0074 ferred with and shall be at the convenience of the parent whose
0075 visitation was denied or interfered with;
- 0076 (3) the posting of a bond, either cash or with sufficient sure-
0077 ties, conditioned upon compliance with the order granting visi-
0078 tation rights;
- 0079 (4) assessment of reasonable attorney fees and costs of the
0080 proceedings to enforce visitation rights against the parent who
0081 unreasonably denied or interfered with the other parent's visita-
0082 tion rights;

Notice of the hearing date set by the hearing officer shall be given by certified mail, return receipt requested, or as the Court may order to all interested parties.

Attach. II

Atch. II
S. Judiciary 2/17/86

COPY

IN THE DISTRICT COURT OF ALLEN COUNTY, KANSAS

| | | |
|-----|--------------|----------------|
| | Plaintiffs) | Case No. _____ |
| vs. |) | |
| |) | |
| |) | |
| | Defendants) | |

ORDER FOR SCHEDULING & DISCOVERY CONFERENCE

IT IS ORDERED that a scheduling and discovery conference will be held in the above-entitled case on the 14th day of April, 1986, at 9:30 o'clock 9.m.

John W. White

 John W. White
 District Judge.

X Copy of order ~~mailed~~/delivered to plaintiff's counsel 2-21, 1986.

Y Copy of order served with summons.

Jeanne Smith

 Jeanne Smith
 Clerk of District Court

Deputy Clerk

FILED
 TIME 4:10 P M

FEB 21 1986

J

James Smith
 CLERK OF THE DISTRICT COURT