

Approved April 7, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

12:30 ~~xxx~~/p.m. on March 27, 1986 in room 519-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Langworthy, Parrish and Winter.

Committee staff present: Mary Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Pat Goodsen, Right to Life
Dr. Robert Harder, Social and Rehabilitation Services
Marjorie Van Buren, Office of Judicial Administrator
Terry Showalter, Wyandotte County Juvenile Court
Lois Jebo, Kansas Action for Children
Lynn Barclay, Kansas Children's Service League
Representative Donna Whiteman

Sub. for House Bill 2873 - Removal of child from home only in emergency.

Dr. Robert Harder, Social and Rehabilitation Services, explained when he testifies on House Bill 2874 he will recommend the provisions that are in House Bill 2873 be consolidated in House Bill 2874.

Pat Goodsen, Right to Life, testified the Kansas Code for Care of Children sets out instances of abuse and neglect. She recommended a provision that the aborted children be included in children in need of care. She stated once the child has been born and shows life, we are no longer talking about abortion. The status of these children under the law is not clear. They are asking the care for these children not be different than for other children. She said SRS has adopted the Baby Doe care for these children, and they are asking for the same. They are asking for favorable passage of the bill. The chairman requested a copy of the Baby Doe provision be made available to the committee.

Copy of a letter from Judge Thomas H. Graber concerning the bill is attached (See Attachment I).

Sub. for House Bill 2874 - Removal of abuser from home of abused child.

Dr. Robert Harder explained the proposed amendments that appear on the balloon copy of the bill (See Attachment II). The items in House Bill 2873 are consolidated in House Bill 2874. Staff inquired if child in need of care, the child born from an abortion, same as Senate Bill 30? Is your office opposed to that concept? Dr. Harder replied, they feel it is redundant. They would treat it as a report of a child in need of care. The staff member inquired who would be required to file that report? Dr. Harder replied, the hospital. They would make an investigation. Staff inquired, would you expect the physician who performed the abortion to file the report? Dr. Harder replied, yes.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 12:30 ~~am~~/p.m. on March 27, 1986.

Sub. for House Bill 2874 continued

Marjorie Van Buren, Office of Judicial Administrator, testified her office had worked with SRS in the development of the language that appears in the balloon copy, and they are comfortable with that. She pointed out the language in line 65, the court "shall" order restraining order, and the language in subsection (d) questioning whether that goes back to the "shall" kind of language. Staff suggested "and may enter a restraining order."

Terry Showalter, Wyandotte County Juvenile Court, testified he would like to echo support for the amendments in the balloon provided by SRS and the comments made by Marjorie Van Buren. He stated he is concerned with removing the perpetrator. They like the new language that will give them the option of restraining the perpetrator, and be able to leave the child at home.

Lois Jebo, Kansas Action for Children, testified they strongly support provisions of House Bill 2873 to ensure that reasonable efforts have been made to keep a family intact before child is removed for protective custody. They recommend the provisions of House Bill 2873 be amended into House Bill 2874. We ask that this committee recommend the bill for passage. A copy of her testimony is attached (See Attachment III).

Lynn Barclay, Kansas Children's Service League, appeared in support of the bill and to propose an amendment that would further protect children. She explained the proposed amendments would prohibit the court from placing a child in need of care in an adult jail. Under these amendments, law enforcement officers could continue to detain children in adult jails, and courts could continue to use licensed juvenile detention facilities or nonsecure facilities for temporary or protective custody of CINC. A copy of her testimony is attached (See Attachment IV). The chairman inquired if this is part of what Senate Bill 2 would have done? She replied, the specific language is not quite the same.

House Bill 2775 - Discretionary appointment of counsel for child in parentage action.

Representative Donna Whiteman, sponsor of the bill, explained the bill amends the Parentage Act to give the court discretion in appointing an attorney to act as guardian ad litem in proceedings to determine parentage. She also requested House Bill 2689 be amended into this bill to return to a procedure which allows parents to correct a child's birth certificate at no expense. Copies of her testimony and proposed amendment are attached (See Attachments V). Committee discussion with her followed.

Marjorie Van Buren, Office of Judicial Administrator, explained her proposed amendment that appears in the balloon version that was passed out conforms to the kind of language used in the new parentage act and will reinstate the simplified procedure. A copy of the proposed amendment is attached (See Attachment VI). The second proposed amendment concerns the situation where the parents of the minor who marry subsequent to the birth of the child. A copy of the proposed amendment is attached (See Attachment VII).

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Terry L. Crable	717 S. Ks Ave	Topeka RTL
Pat Goodson	Shawnee	RTL
Judy Basse	Leighton	RTL
Jim Clark	Topeka	KC WAA
Tony Showalter	KCK	Wy. Co. Dist. Ct.
SYDNEY KARR	TOPEKA	OJA
Kay Billman	Topeka	OJA
Bob Dan	"	SRS
ROBERT FORDER	"	SRS
Theresa Shively	Topeka	KANSAS NARAL
Dorlene Stearns	Topeka	PCAR
KETHR LANDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Rep. Dan Whitman	Hutchinson	Rep.
Luis Solo	Hutchinson	Topeka
Wynn Barclay	KCSI	Topeka
Leonard A. Maty	La Crosse	JUDICIAL BRANCH
Majorie Van Buren	Topeka	OJA
Bob Smith	"	KBA
Robert Harris	Topeka	SRS

SUMNER COUNTY DISTRICT COURT

THIRTIETH JUDICIAL DISTRICT

Associate District Judges:
Lloyd K. McDaniel
Thomas H. Graber

Sumner County Courthouse
Wellington, Kansas 67152

Re: House Bill No. 2873

Dear Senator Frey and members of the Senate Judiciary Committee

I will be unable to attend the hearing scheduled for March 27th, 1986 in regard to House Bill No. 2873. I am therefore writing this letter and request that you consider it in your deliberations.

I am particularly concerned with the language found on page 4 in section (f) beginning on line 0247. That mandatory language would have the effect of preventing the court from protecting the majority of children in need of care. In most instances when a court has a temporary custody hearing Social and Rehabilitative Services has had no prior contact with the family and has made no efforts to prevent or eliminate the need for temporary custody. I would suggest two factual situations which come to mind.

First, a child of 3 is reported to the Social and Rehabilitative Services as having been abused, and they have investigated and believe that the child has been physically abused. The most recent incident involved a severe beating and the father forcing the child to eat its own feces. The natural mother was not available. The language House Bill No. 2873 would prevent the court from removing that child from the father's custody and protecting it in a foster home.

Second, a child has infant crib death syndrome and has been equipped with a heart monitor and alarm. Social and Rehabilitative Services receives a report and upon investigation finds that the mother, who had limited mental capacity, has removed the monitor because the alarm kept going off and waking her and the baby up. There was no other caretaker available in the home and no prior service had been offered by Social and Rehabilitative Services.

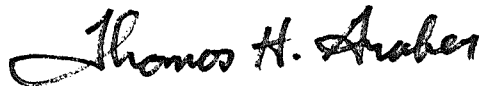
S. Jud.
3/27/86
A I

Under the current language of House Bill No. 2873 the court could not protect such an infant by placing it in temporary custody.

A similar problem exists with language found on page 5 subsection (d) beginning at line 305. Pursuant to this language a court, even after finding that placing a child with its parent will not assure it protection from abuse etc. can't place the child outside the home unless reasonable efforts have already been made to prevent the removal of the child from parental custody. The language puts the court in the position of having to leave a child, who has been found to be in need of care, in the custody of a parent even though the court has found that placement with the parent will not assure protection from abuse, etc.. The Court simply can't remove a child from the home unless Social and Rehabilitative Services made reasonable efforts to prevent the removal.

I would suggest that the courts ability to protect children must not be limited in this manner and would suggest the changes included in the attached balloon copy of House Bill No. 2873

Sincerely,



Thomas H. Graber
Associate District Judge

HI
A

0205 _____
0206 _____
0207 _____
0208 _____

0209 I advised each of the above persons that:
0233 (1) The hearing is to determine if the above child or children should be in the
0234 temporary custody of a person or agency other than a parent;
0235 (2) the court will appoint an attorney to serve as guardian *ad litem* for the
0236 child or children named above;
0237 (3) each parent or legal custodian has the right to appear and be heard
0238 personally either with or without an attorney; and
0239 (4) an attorney will be appointed for a parent who can show that the parent is
0240 not financially able to hire an attorney.

0241 _____
0242 (Signature)
0243 _____
0244 (Name Printed)
0245 _____
0246 (Title)

0247 (f) The court may enter an order of temporary custody after
0248 determining that: ~~(1) [reasonable efforts have been made to~~ or
0249 ~~prevent or eliminate the need for temporary custody and that: (1)~~ and that: (1)
0250 ~~An emergency exists which threatens the safety of the child; (2)~~
0251 ~~The child is dangerous to self or to others; (2) (3)~~ (2)
0252 ~~likely to be available within the jurisdiction of the court for~~ (3)
0253 ~~future proceedings; or (3) (4)~~ (3)
0254 ~~the health or welfare of the child~~
0255 may be endangered without further care.

0255 (g) Whenever the court determines the necessity for an order
0256 of temporary custody the court may place the child in the
0257 temporary custody of: (1) Some person, other than the parent or
0258 other person having custody, who shall not be required to be
0259 licensed under article 5 of chapter 65 of the Kansas Statutes
0260 Annotated; (2) a youth residential facility; or (3) the secretary.
0261 When circumstances require, a child may be placed in a juvenile
0262 detention facility, but the total amount of time that the child may
0263 be held in the facility under this section and K.S.A. ~~1982~~ 1985
0264 Supp. 38-1542 and amendments thereto shall not exceed 24
0265 hours, excluding Saturdays, Sundays and legal holidays. The
0266 order of temporary custody shall remain in effect until modified
0267 or rescinded by the court or a disposition order is entered.

0268 ~~(h) The court shall not enter an order removing a child from~~
0269 ~~the custody of a parent pursuant to this section unless the court~~
0270 ~~first finds from evidence presented by the petitioner that rea-~~
0271 ~~nable efforts have been made to prevent or eliminate the need~~
0272 ~~removal of the child or that an emergency exists which~~

0273 ~~threatens the safety of the child and requires the immediate~~
0274 ~~removal of the child. Such findings shall be included in any~~
0275 ~~order entered by the court.~~

0276 Sec. 3. K.S.A. 1985 Supp. 38-1563 is hereby amended to read
0277 as follows: 38-1563. (a) After consideration of any evidence
0278 offered relating to disposition, the court may retain jurisdiction
0279 and place the child in the custody of the child's parent subject to
0280 terms and conditions which the court prescribes to assure the
0281 proper care and protection of the child, including supervision of
0282 the child and the parent by a court services officer, or may order
0283 the child and the parent to participate in programs operated by
0284 the secretary or another appropriate individual or agency. The
0285 terms and conditions may require any special treatment or care
0286 which the child needs for the child's physical, mental or emo-
0287 tional health.

0288 (b) The duration of any period of supervision or other terms
0289 or conditions shall be for an initial period of no more than 18
0290 months. The court, at the expiration of that period, upon a
0291 hearing and for good cause shown, may make successive exten-
0292 sions of the supervision or other terms or conditions for up to 12
0293 months at a time.

0294 (c) The court may order the child and the parents of any child
0295 who has been adjudged a child in need of care to attend coun-
0296 seling sessions as the court directs. The expense of the coun-
0297 seling may be assessed as an expense in the case. No mental
0298 health center shall charge a greater fee for court-ordered coun-
0299 seling than the center would have charged to the person receiv-
0300 ing counseling if the person had requested counseling on the
0301 person's own initiative.

0302 (d) If the court finds that placing the child in the custody of a
0303 parent will not assure protection from physical, mental or emo-
0304 tional abuse or neglect or sexual abuse or will not be in the best
0305 interests of the child [and that reasonable efforts have been made
0306 to prevent or eliminate the need for removal of the child from
0307 parental custody], the court shall enter an order awarding cus-
0308 tody of the child, until the further order of the court, to one of the
following:

or that an emergency exists which threatens the
safety of the child,

Statement Regarding H.B. 2874

1. Title

An Act concerning the Kansas Code for Care of Children; providing for issuance of restraining orders thereunder and enforcement thereof; and relating to removal of children from custody of their parents.

2. Purpose

This bill as amended has dual but related purposes: 1) to provide a physically safe environment for a child by restraining the alleged perpetrator of abuse from residing in the child's home, visiting, contacting, harassing, or intimidating the child; and 2) to clarify that prior to removing a child from the home there must be a judicial determination that reasonable efforts to prevent removal were made or the removal is due to an emergency.

3. Background

The provisions related to the requirement of judicial determination that reasonable efforts have been made to prevent placement or that an emergency exists were in H.B. 2873 which passed out of the Committee with carefully negotiated language that was acceptable to the judiciary.

The amendments made by the House Committee of the Whole changed the language that had been carefully worked out in the Committee and added new Section Four which is unrelated and controversial in nature.

We are proposing amendments to H.B. 2874 which includes the consensus language developed in H.B. 2873. Language found in this bill is what was recommended for passage by the House Committee.

We are suggesting modification of H.B. 2874 to provide increased opportunity to prevent out-of-home placement. The court may issue a restraining order at any time it issues an order of custody. We believe this modified language will be acceptable to the judiciary.

Both of the provisions contained in this bill are of great importance to the Department of Social & Rehabilitation Services. The judicial determination of reasonable effort prior to the removal of children from their families insures compliance with federal regulations. Without this we jeopardize \$6 million in federal financial participation.

Providing the court with another option in insuring the protection of children with minimal disruption in their lives serves the best interest of children and strengthens families and could reduce the need for out-of-home placement.

4. Effect of Passage

In language acceptable to the judiciary and uncontaminated by unrelated controversy this legislation will clarify the court's responsibility, assist the Department of Social & Rehabilitation Services in remaining eligible for federal foster care funds, and provide opportunities to minimize out-of-home placements while safeguarding the child.

5. Recommendation

SRS recommends passage.

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

S. Jud.
3/27/86
A-II

3-27-86
Mr. Harder

Session of 1986

Substitute for HOUSE BILL No. 2874

By Committee on Judiciary

2-25

0017 AN ACT concerning the Kansas code for care of children; pro-
0018 viding for issuance of restraining orders thereunder and en-
0019 forcement thereof; amending K.S.A. 21-3721 and K.S.A. 1985
0020 Supp. 38-1542, 38-1543 and 38-1563 and repealing the exist-
0021 ing sections.

and relating to removal of
children from custody of
their parents;

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 21-3721 is hereby amended to read as fol-
0024 lows: 21-3721. Criminal trespass is entering or remaining upon
0025 or in any land, structure, vehicle, aircraft or watercraft by a
0026 person who knows he or she is not authorized or privileged to do
0027 so, and:

0028 (a) Such person enters or remains therein in defiance of an
0029 order not to enter or to leave such premises or property person-
0030 ally communicated to such person by the owner thereof or other
0031 authorized person; or

0032 (b) such premises or property are posted in a manner rea-
0033 sonably likely to come to the attention of intruders, or are locked
0034 or fenced or otherwise enclosed, or shut or secured against
0035 passage or entry; or

0036 (c) such person enters or remains therein in defiance of a
0037 restraining order issued pursuant to K.S.A. 1980 Supp. 60-1607,
0038 60-3105, 60-3106 or 60-3107, and any amendments to said statu-
0039 tory sections or K.S.A. 1985 Supp. 38-1542, 38-1543 or 38-1563,
0040 and amendments thereto, and the restraining order has been
0041 personally served upon the person so restrained.

0042 Criminal trespass is a class B misdemeanor.

0043 Sec. 2. K.S.A. 1985 Supp. 38-1542 is hereby amended to read
0044 as follows: 38-1542. (a) The court upon verified application may
0045 issue an *ex parte* order of protective custody. The application

A
H

0046 shall state:

0047 (1) The applicant's belief that the child is a child in need of
0048 care and is likely to sustain harm if not immediately afforded
0049 protective custody; and

0050 (2) the specific facts which are relied upon to support the
0051 belief.

0052 (b) The order of protective custody may be issued only after
0053 the court has determined there is probable cause to believe the
0054 allegations in the application are true. The order shall remain in
0055 effect until the temporary custody hearing provided for in K.S.A.
0056 ~~1985~~ 1985 Supp. 38-1543 and amendments thereto, unless ear-
0057 lier rescinded by the court. No child shall be held in protective
0058 custody for more than 48 hours, excluding Saturdays, Sundays
0059 and legal holidays, unless within the 48 hour period a determi-
0060 nation is made as to the necessity for temporary custody in a
0061 temporary custody hearing.

0062 (c) Whenever the court determines the necessity for an order
0063 of protective custody, the court may place the child in the
0064 protective custody of: (1) ~~Some~~ A parent or other person having
0065 custody of the child and enter a restraining order pursuant to
0066 subsection (d); (2) a person, other than the parent or other person
0067 having custody, who shall not be required to be licensed under
0068 article 5 of chapter 65 of the Kansas Statutes Annotated; ~~(3)~~ (3) a
0069 youth residential facility; or ~~(4)~~ (4) the secretary. When circum-
0070 stances require, a child in protective custody may be placed in a
0071 juvenile detention facility pursuant to an order of protective
0072 custody for not to exceed 24 hours, excluding Saturdays, Sundays
0073 and legal holidays.

issues an order of ~~0074 (d) If the court places a child in the protective custody of a~~
0075 ~~parent or other person having custody of the child, the court~~
may ~~0076 shall~~ enter an order restraining any alleged perpetrator of
0077 physical, sexual, mental or emotional abuse of the child from
0078 residing in the child's home; visiting, contacting, harassing or
0079 intimidating the child; or attempting to visit, contact, harass or
0080 intimidate the child.

0081 (e) The order of protective custody shall be served on parents
0082 and other persons having legal custody and shall prohibit all

0083 parties from removing the child from the court's jurisdiction
0084 without the court's permission.

0085 Sec. 3. K.S.A. 1985 Supp. 38-1543 is hereby amended to read
0086 as follows: 38-1543. (a) Upon notice and hearing, the court may
0087 issue an order directing who shall have temporary custody and
0088 may modify the order during the pendency of the proceedings as
0089 will best serve the child's welfare.

0090 (b) A hearing hereunder shall be held within 48 hours, ex-
0091 cluding Saturdays, Sundays and legal holidays, following a child
0092 having been taken into protective custody.

0093 (c) Whenever it is determined that a temporary custody
0094 hearing is required, the court shall immediately set the time and
0095 place for the hearing. Notice of a temporary custody hearing shall
0096 be in substantially the following form:

0097 (Caption of Case) _____ (Name of Court)
0098
0099 NOTICE OF TEMPORARY CUSTODY HEARING
0100
0101 TO:
0102 (Names) (Relationship) (Addresses)
0103 _____
0104 _____
0105 _____
0106 _____
0107 _____
0108 _____
0109 _____
0110 _____
0111 _____
0112 On _____, 19____, at _____ o'clock _____ m. the court
0113 (day) (date)
0114 will conduct a hearing at _____ to determine if the above
0115 named child or children should be in the temporary custody of some person or
0116 agency other than the parent or other person having legal custody prior to the
0117 hearing on the petition filed in the above captioned case.
0118 _____, an attorney, has been appointed as guardian *ad litem* for the
0119 child or children. Each parent or other legal custodian has the right to appear and
0120 be heard personally, either with or without an attorney. An attorney will be
0121 appointed for a parent who can show that the parent is not financially able to hire
0122 one.

0123 Date _____, 19____ Clerk of the District Court
0124 by _____
0125 (Seal)

0126
0127 REPORT OF SERVICE
0128 I certify that I have delivered a true copy of the above notice to the persons
0129 above named in the manner and at the times indicated below:
0130
0131 Name Location of Service Manner of Service Date Time
0132 (other than above)
0133 _____
0134 _____
0135 _____
0136 _____
0137 _____
0138 _____
0139 _____
0140 _____
0141 _____
0142 _____
0143 _____
0144 _____
0145 _____
0146 _____
0147 _____
0148 _____
0149 _____
0150 _____
0151 Date Returned _____, 19____
0152 (Signature)
0153 _____
0154 (Title)

0155 (d) Notice of the temporary custody hearing shall be given at

(f) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner 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. Such findings shall be included in any order entered by the court.

A
H

0160 least 24 hours prior to the hearing. The court may continue the
0161 hearing to afford the 24 hours prior notice or, with the consent of
0162 the party, proceed with the hearing at the designated time. If an
0163 order of temporary custody is entered and the parent or other
0164 person having custody of the child has not been notified of the
0165 hearing, did not appear or waive appearance and requests a
0166 rehearing, the court shall rehear the matter without unnecessary
0167 delay.

0168 (e) Oral notice may be used for giving notice of a temporary
0169 custody hearing where there is insufficient time to give written
0170 notice. Oral notice is completed upon filing a certificate of oral
0171 notice in substantially the following form:

0172 _____
0173 (Name of Court)

0174 (Caption of Case)

0175 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

0176 I gave oral notice that the court will conduct a hearing at _____ o'clock

0177 _____ m. on _____, 19____, to the persons listed, in the manner and at the

0178 times indicated below:

0179 Name Relationship Date Time Method of Communication

0184 _____
0189 _____
0194 _____
0199 _____

0204 I advised each of the above persons that:

- 0205 (1) The hearing is to determine if the above child or children should be in the
- 0206 temporary custody of a person or agency other than a parent;
- 0207 (2) the court will appoint an attorney to serve as guardian *ad litem* for the
- 0208 child or children named above;
- 0209 (3) each parent or legal custodian has the right to appear and be heard
- 0210 personally either with or without an attorney; and
- 0211 (4) an attorney will be appointed for a parent who can show that the parent is
- 0212 not financially able to hire an attorney.

0213 _____

0214 (Signature)

0215 _____

0216 (Name Printed)

0217 _____

0218 (Title)

0219 (f) The court may enter an order of temporary custody after
0220 determining that: (1) The child is dangerous to self or to others;
0221 (2) the child is not likely to be available within the jurisdiction of
0222 the court for future proceedings; or (3) the health or welfare of
0223 the child may be endangered without further care.

0224 (g) Whenever the court determines the necessity for an order
0225 of temporary custody the court may place the child in th
0226 temporary custody of: (1) ~~Some A parent~~ or other person having
0227 custody of the child and enter a restraining order pursuant to

0228 subsection (h); (2) a person, other than the parent or other person
0229 having custody, who shall not be required to be licensed under
0230 article 5 of chapter 65 of the Kansas Statutes Annotated; ~~(3)~~ (3) a
0231 youth residential facility; or ~~(4)~~ (4) the secretary. When circum-
0232 stances require, a child may be placed in a juvenile detention
0233 facility, but the total amount of time that the child may be held in
0234 the facility under this section and K.S.A. ~~1980~~ 1985 Supp. 38-
0235 1542 and amendments thereto shall not exceed 24 hours, ex-
0236 cluding Saturdays, Sundays and legal holidays. The order of
0237 temporary custody shall remain in effect until modified or re-
0238 scinded by the court or a disposition order is entered.

0239 (h) If the court ~~places a child in the temporary custody of a~~ issues an order of

0240 ~~parent or other person having custody of the child, the court~~

0241 ~~shall enter an order restraining any alleged perpetrator of~~ may

0242 physical, sexual, mental or emotional abuse of the child from

0243 residing in the child's home; visiting, contacting, harassing or

0244 intimidating the child; or attempting to visit, contact, harass or

0245 intimidate the child.

0246 ~~The court shall not enter an order removing a child from~~

0247 ~~the custody of a parent pursuant to this section unless the court~~

0248 ~~first finds from evidence presented by the petitioner that rea-~~

0249 ~~sonable efforts have been made to prevent or eliminate the need~~

0250 ~~for removal of the child or that an emergency exists which~~

0251 ~~threatens the safety of the child and requires the immediate~~

0252 ~~removal of the child. Such findings shall be included in any~~

0253 ~~order entered by the court.~~

0254 Sec. 4. K.S.A. 1985 Supp. 38-1563 is hereby amended to read

0255 as follows: 38-1563. (a) After consideration of any evidence

0256 offered relating to disposition, the court may retain jurisdiction

0257 and place the child in the custody of the child's parent subject to

0258 terms and conditions which the court prescribes to assure the

0259 proper care and protection of the child, including supervision of

0260 the child and the parent by a court services officer, or may order

0261 the child and the parent to participate in programs operated by

0262 the secretary or another appropriate individual or agency. The

0263 terms and conditions may require any special treatment or care

0264 which the child needs for the child's physical, mental or emo-

0265 tional health.

(b) The duration of any period of supervision or other terms

or conditions shall be for an initial period of no more than 18

months. The court, at the expiration of that period, upon a

hearing and for good cause shown, may make successive exten-

sions of the supervision or other terms or conditions for up to 12

months at a time.

(c) The court may order the child and the parents of any child

A II

0265 who has been adjudged a child in need of care to attend coun-
 0266 seling sessions as the court directs. The expense of the coun-
 0267 seling may be assessed as an expense in the case. No mental
 0268 health center shall charge a greater fee for court-ordered coun-
 0269 seling than the center would have charged to the person receiv-
 0270 ing counseling if the person had requested counseling on the
 0271 person's own initiative.

0272 (d) If the court finds that placing the child in the custody of a
 0273 parent will not assure protection from physical, mental or emo-
 0274 tional abuse or neglect or sexual abuse or will not be in the best
 0275 interests of the child, the court shall enter an order awarding
 0276 custody of the child, until the further order of the court, to one of
 0277 the following:

- 0278 (1) A relative of the child or a person with whom the child has
 0279 close emotional ties;
 0280 (2) any other suitable person;
 0281 (3) a shelter facility; or
 0282 (4) the secretary.

0283 In making such a custody order, the court shall give prefer-
 0284 ence, to the extent that the court finds it is in the best interests of
 0285 the child, first to granting custody to a relative of the child and
 0286 second to granting custody of the child to a person with whom
 0287 the child has close emotional ties.

0288 If the court has awarded legal custody based on the finding
 0289 specified by this subsection, the legal custodian shall not return
 0290 the child to the home of that parent without the written consent
 0291 of the court.

0292 (e) When the custody of the child is awarded to the secretary:

- 0293 (1) The court may recommend to the secretary where the
 0294 child should be placed, but the court shall not have the power to
 0295 direct a specific placement; and
 0296 (2) the secretary shall notify the court in writing of any
 0297 placement of the child as soon as the placement is accomplished.

0298 (f) If custody of a child is awarded under this section to a
 0299 person other than the child's parent, the court may grant any
 0300 individual reasonable rights to visit the child upon motion of the
 0301 individual and a finding that the visitation rights would be in the

0302 best interests of the child.

0303 (g) ~~If the court places a child in the custody of a parent~~ issues an order
 0304 pursuant to this section, the court shall enter an order restrain- may
 0305 ing any alleged perpetrator of physical, sexual, mental or emo-
 0306 tional abuse of the child from residing in the child's home;
 0307 visiting, contacting, harassing or intimidating the child; or
 0308 attempting to visit, contact, harass or intimidate the child.

h 0309 ~~(h) The court shall not enter an order removing a child from~~
 0310 the custody of a parent pursuant to this section unless the court
 0311 first finds from evidence presented by the petitioner that rea-
 0312 sonable 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. Such findings shall be included in any
 order entered by the court.

Sec. 5. K.S.A. 21-3721 and K.S.A. 1985 Supp. 38-1542, 38-
 1543 and 38-1563 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and
 after its publication in the statute book.



Because all children need someone who cares . . .
**Kansas Action
for Children, inc.**
A non-profit, tax-exempt organization.

701 Jackson, B-2
Box 463
Topeka, Kansas 66601
913 232-0550
LOIS JEBO
Executive Director

Testimony on HB 2873 and HB 2874

given before the

Senate Committee on Judiciary

ADVISORY COMMITTEE:

- Don Adams**
First National Bank
of Hutchinson
- Richard Bond**
Home State Bank
of Kansas City
- James Lynn Casey, M.D.**
Pediatric Endocrinology
H. Edward Flentje
Wichita State University
- Suellen Fried**
National Committee for the
Prevention of Child Abuse
- Russell Getter, Ph.D.**
University of Kansas
- Richard A. Guthrie, M.D.**
KU School of Medicine
- Marvin Harder, Ph.D.**
Secretary of Administration
State of Kansas
- E. Kent Hayes**
The Menninger Foundation
- Erv Janssen, M.D.**
The Menninger Foundation
- Betty Keim**
Founding President, KAC
- Ellen Laner**
Metropolitan Child Abuse
and Neglect Network Project
- Maria Mack**
Wichita State University
- Melissa P. Masoner**
Topeka Youth Project, Inc.
- Karl Menninger, M.D., F.A.P.A.**
The Villages, Inc.
- Bette Morris**
Governor's Commission on
Education for Parenthood
- Judge Lee Nusser**
20th Judicial District
- Sue Parcell**
WDAF-TV
- Gina Pulliam**
Johnson County
United Community Services
- Alicia Salisbury**
Founder, KAC
- Patricia T. Schloesser, M.D.**
Kansas Dept. of Health
and Environment
- Terry Showalter**
Wyandotte County District Court
- Lucy Nichols Stein, M.ED., R.N.**
Kansas State Nurses Association

Kansas Action for Children strongly supports the provisions of HB 2873 that ensure that reasonable efforts have been made to keep a family intact before a child is removed for protective custody.

The state must demonstrate that preventive and reunification efforts are made to keep families together to receive the full amount of federal foster care maintenance funds available to the state.

This provision was included in the Child Welfare and Adoption Assistance Act because of the overuse of foster care nationwide. The intent of the act is to cause the different branches of government to operate as checks and balances on the child welfare system.

An additional reason to include this provision in state statute is to further specify the current policy of making the family the first choice for children coming to the attention of the child welfare system. By requiring that efforts are made to provide services that will raise the level of parenting to a standard acceptable to the community, the state is acting responsibly in both fiscal and human terms.

Most children that enter the foster care system will eventually return to their family of origin. Applying intervention and treatment before the child is removed saves the family pain of separation and the saves the state large fiscal expenditures for out of home care.

Kansas Action for Children also supports HB 2874 which we consider part of the effort to eliminate the need for protective custody. We suggest that the reasonable efforts provisions of HB 2873 be amended into HB 2874. We ask that this Committee recommend HB 2874 for passage.

OFFICERS AND BOARD OF DIRECTORS

- Eleanor Lowe, President, Shawnee Mission • Sue Lockett, Vice President, Topeka • Margot Breckbill, Vice President, Wichita • Roonie Sellers, Vice President, Hutchinson • Mary McCallister, Secretary, Topeka
- Marion Springer, Treasurer, Lawrence • Katie Mallon, Kansas City • Barbara Becker, El Dorado • Mary Ann Bottenberg, Topeka • Debbie Britting, Wichita • Kathy Champlin, Shawnee • Jean DeDonder, Emporia
- Alice Fitzcharles, Shawnee Mission • Judy Frick, Wichita • Janet Hatchett, Wichita • Nancy Hiebert, Lawrence • Patti Hurley, Topeka • Carol Keller, Shawnee Mission • J. R. Majors, Shawnee Mission
- Nancy Parrish, Topeka • Patricia Riley, Topeka • Sharon Rooney, Minneola • Mary Tikwart, Shawnee Mission • Margaret Yarnevich, Salina

S. Jud.
3/27/86

A III

KANSAS CHILDREN'S SERVICE LEAGUE

to protect,
enhance and promote
the welfare of
children
—since 1893

BOARD OF DIRECTORS

- CALDWELL
Mary Lou Woods
- CANEY
Betty Moore
- DODGE CITY
Lee Speer
- EMPORIA
Toy Caldwell-Colbert
- GARDEN CITY
Phyllis Bigler
- HUTCHINSON
Dorothy Holland
Nancy T. Shears
- JUNCTION CITY
David P. Troup
- KANSAS CITY
Mary Ann Flunder
Donald D. Ford
Eugene Williams
- LAWRENCE
Jacob U. Gordon
- LEWIS
Rev. Irving Jennings
- MANHATTAN
Jane Good
Veryl A. Switzer
- SALINA
Glorine J. Shelton
- STERLING
Melva J. Sankey
- TOPEKA
Samuel L. Anderson
Joyce DeCoursey
Robert L. Derstein
John W. Hartmann
Bette M. Morris
Linda G. Mowbray
Marcia Saville
Marianne Wilkinson
- ULYSSES
Aileen DeBruce
Janet Kimball
- WICHITA
Robert Dool
Jaclyn Gossard
Pete R. Kitch, Jr.
Darlene R. Knorr
Bertha Milbank
Ann Rempel
Robert Sarver
Jayne S. Smith
Antoinette Tejada
Bridget Thornton
Marilyn J. Tilford
Vince Wells

EXECUTIVE DIRECTOR

Jerry Coppel
1365 N. Custer
P.O. Box 517
Wichita, Kansas 67201
316/942-4261

Testimony on HB 2874
before
Senate Judiciary Committee

March 27, 1986

My name is Lynn Zeller Barclay and I am the Advocacy Coordinator for Kansas Children's Service League. I am here to testify in support of HB 2874 and to propose an amendment that would further protect children.

HB 2874 is designed to give added protection to abused children by removing the alleged perpetrator from the home. Although this option will not work in all cases, it is a desirable one for courts to consider. Too often, abused children who are removed from their home feel further victimized by that removal.

KCSL would propose going one step further in adding protection to these children. Our amendments would help CINC's avoid the further victimization of being placed in an adult jail.

In FY 1985, there were 1,400 youths placed in adult jails in Kansas. Up to 1/3 were in the CINC category:

CINC	3%
In-State Runaway	12%
Out-of-State Runaway	7%
Runaway from Court- Ordered Placement	9%
Total	<u>31%</u>

Very often, youths who run away from home are running because they were sexually, physically or emotionally abused by their parents. Current law allows the courts to detain these children in adult jails for up to 24 hours. We feel this is adding insult to injury for these children and believe there are far more appropriate and caring placements for these youths who are not charged with any offense.

Our proposed amendments would prohibit the court from placing a CINC in an adult jail. (Proposed language attached.) Under these amendments, law enforcement officers could continue to detain children in adult jails (K.S.A. 38-1528), and courts could continue to use licensed juvenile detention facilities or non-secure facilities for temporary or protective custody of CINC's.

Thank you.

S. Jud.
3/27/86
A IV



3-27-86
Lynn Buckley

0046 shall state:

0047 (1) The applicant's belief that the child is a child in need of
0048 care and is likely to sustain harm if not immediately afforded
0049 protective custody; and

0050 (2) the specific facts which are relied upon to support the
0051 belief.

0052 (b) The order of protective custody may be issued only after
0053 the court has determined there is probable cause to believe the
0054 allegations in the application are true. The order shall remain in
0055 effect until the temporary custody hearing provided for in K.S.A.
0056 ~~1982~~ 1985 Supp. 38-1543 and amendments thereto, unless ear-
0057 lier rescinded by the court. No child shall be held in protective
0058 custody for more than 48 hours, excluding Saturdays, Sundays
0059 and legal holidays, unless within the 48 hour period a determi-
0060 nation is made as to the necessity for temporary custody in a
0061 temporary custody hearing.

0062 (c) Whenever the court determines the necessity for an order
0063 of protective custody, the court may place the child in the
0064 protective custody of: (1) ~~Some~~ A parent or other person having
0065 custody of the child and enter a restraining order pursuant to
0066 subsection (d); (2) a person, other than the parent or other person
0067 having custody, who shall not be required to be licensed under
0068 article 5 of chapter 65 of the Kansas Statutes Annotated; ~~(2)~~ (3) a
0069 youth residential facility; or ~~(3)~~ (4) the secretary. When circum-
0070 stances require, a child in protective custody may be placed in a
0071 juvenile detention facility pursuant to an order of protective
0072 custody for not to exceed 24 hours, excluding Saturdays, Sundays
0073 and legal holidays, but such detention shall not be in an adult jail or lockup.

0074 (d) *If the court places a child in the protective custody of a*
0075 *parent or other person having custody of the child, the court*
0076 *shall enter an order restraining any alleged perpetrator of*
0077 *physical, sexual, mental or emotional abuse of the child from*
0078 *residing in the child's home; visiting, contacting, harassing or*
0079 *intimidating the child; or attempting to visit, contact, harass or*
0080 *intimidate the child.*

0081 (e) The order of protective custody shall be served on parents
0082 and other persons having legal custody and shall prohibit all

A-IV

0228 subsection (h); (2) a person, other than the parent or other person
 0229 having custody, who shall not be required to be licensed under
 0230 article 5 of chapter 65 of the Kansas Statutes Annotated; ~~(2)~~ (3) a
 0231 youth residential facility; or ~~(3)~~ (4) the secretary. When circum-
 0232 stances require, a child may be placed in a juvenile detention
 0233 facility, but the total amount of time that the child may be held in
 0234 the facility under this section and K.S.A. ~~1982~~ 1985 Supp. 38-
 0235 1542 and amendments thereto shall not exceed 24 hours, ex-
 0236 cluding Saturdays, Sundays and legal holidays. The order of
 0237 temporary custody shall remain in effect until modified or re-
 0238 scinded by the court or a disposition order is entered.

which is not an adult jail or lockup

0239 (h) If the court places a child in the temporary custody of a
 0240 parent or other person having custody of the child, the court
 0241 shall enter an order restraining any alleged perpetrator of
 0242 physical, sexual, mental or emotional abuse of the child from
 0243 residing in the child's home; visiting, contacting, harassing or
 0244 intimidating the child; or attempting to visit, contact, harass or
 0245 intimidate the child.

0246 Sec. 4. K.S.A. 1985 Supp. 38-1563 is hereby amended to read
 0247 as follows: 38-1563. (a) After consideration of any evidence
 0248 offered relating to disposition, the court may retain jurisdiction
 0249 and place the child in the custody of the child's parent subject to
 0250 terms and conditions which the court prescribes to assure the
 0251 proper care and protection of the child, including supervision of
 0252 the child and the parent by a court services officer, or may order
 0253 the child and the parent to participate in programs operated by
 0254 the secretary or another appropriate individual or agency. The
 0255 terms and conditions may require any special treatment or care
 0256 which the child needs for the child's physical, mental or emo-
 0257 tional health.

0258 (b) The duration of any period of supervision or other terms
 0259 or conditions shall be for an initial period of no more than 18
 0260 months. The court, at the expiration of that period, upon a
 0261 hearing and for good cause shown, may make successive exten-
 0262 sions of the supervision or other terms or conditions for up to 12
 0263 months at a time.

0264 (c) The court may order the child and the parents of any child

A
 III

3-27-86

STATE OF KANSAS

DONNA L. WHITEMAN
REPRESENTATIVE, 102ND DISTRICT
RENO COUNTY
P.O. BOX 11
HUTCHINSON, KANSAS 67501-0011



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: RULES AND JOURNAL
MEMBER: JUDICIARY
LABOR AND INDUSTRY
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
ADVISORY COMMISSION ON
JUVENILE OFFENDERS

House Bill 2775

Section 38-1117 of the Kansas Parentage Act requires the court to appoint a Guardian ad litem to represent the minor child in all proceedings to determine parentage. A guardian ad litem is a special guardian appointed by the court to prosecute or defend a suit of a party incapacitated by infancy or otherwise. The guardian is considered an officer of the court to represent the interests of the minor in litigation.

House Bill 2775 amends the Parentage Act to give the court discretion in appointing an attorney to act as guardian ad litem in proceedings to determine parentage.

This bill was requested by the Administrative District Court Judge. In Reno County, a large majority of the parentage proceedings are brought by SRS to determine child support obligations. In those cases the mother's interest and the child's interests are one and the same.

Under the Parentage Act, the court may order the fees for the guardian ad litem to be paid by the parties. The court may also order the portion of any indigent party to be paid from the county general fund.

Last year Reno County spent \$34,000 to local attorney's who were court appointed on various cases.

As amended by the House Committee, section 38-1125 provides the court must appoint a guardian ad litem to represent the child if the interests of the child and the petitioner differ, but allows the court discretion to appoint an attorney in any other situation.

S. Jud.
3/27/86
A V

STATE OF KANSAS

DONNA L. WHITEMAN
REPRESENTATIVE, 102ND DISTRICT
RENO COUNTY
P.O. BOX 11
HUTCHINSON, KANSAS 67501-0011



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: RULES AND JOURNAL
MEMBER: JUDICIARY
LABOR AND INDUSTRY
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
ADVISORY COMMISSION ON
JUVENILE OFFENDERS

House Bill 2689

When we adopted the Uniform Parentage Act last year we inadvertently repealed K.S.A. 23-126 which allowed parents who got married after the birth of their child to change the name on the child's birth certificate by appearing before the judge and signing an affidavit.

By repealing K.S.A. 23-126 parents now have to file a petition in the district court which costs \$55,00 and hire an attorney to change the child's birth certificate.

I respectfully request you amend HB 2689 into HB 2775 so that we can return to a procedure which allows parents to correct a child's birth certificate at no expense.

mate, subsequently become lawfully married to each other, the birth is rendered legitimate by such marriage.

History: L. 1963, ch. 253, § 1; June 30.

Cross References to Related Sections:

Uniform vital statistics act, 65-2411, 65-2422 to 65-2424.

Research and Practice Aids:

Bastards—12.

C.J.S. Bastards § 12.

Law Review and Bar Journal References:

Survey on family law, John Brand, Jr. and Dan Hopson, Jr., 12 K.L.R. 260 (1963).

Illegitimacy in Kansas, Donald W. Vasos, 14 K.L.R. 473, 475, 477 (1966).

Survey of Kansas family law, Harvey S. Berenson, 17 K.L.R. 349, 352 (1969).

"Domestic Relations: Kansas Recognizes Unadjudicated Natural Father May Render Valid Adoptive Consent," Dan Muchow, 19 W.L.J. 167, 170 (1979).

CASE ANNOTATIONS

1. Failure to comply with section noted in holding unadjudicated father of illegitimate child was "parent" authorized to consent to adoption. *Aslin v. Seamon*, 225 K. 77, 79, 587 P.2d 875.

23-126. Legitimation of birth; affidavits of parents; nonresident parents. Both parents shall appear before any judge of the district court in the state of Kansas as soon as practicable after such marriage, and execute affidavits in the presence of the judge, attesting to the fact that each is a parent of the child and that such parents have subsequent to the birth lawfully intermarried. When both parents are not residents of the state of Kansas and are without the state of Kansas then both parents shall file affidavits, executed in the presence of a judicial officer of the state of their residence, with the judge of the district court of any county attesting to the fact that each is a parent of the child and that such parents have subsequent to the birth of the child lawfully intermarried.

History: L. 1963, ch. 253, § 2; L. 1967, ch. 205, § 1; L. 1976, ch. 145, § 127; Jan. 10, 1977.

Research and Practice Aids:

Bastards—12.

C.J.S. Bastards § 12.

Law Review and Bar Journal References:

Illegitimacy in Kansas, Donald W. Vasos, 14 K.L.R. 473, 475, 477 (1966).

"Domestic Relations: Kansas Recognizes Unadjudicated Natural Father May Render Valid Adoptive Consent," Dan Muchow, 19 W.L.J. 167, 170 (1979).

23-127. Same; evidence of marriage and of birth of children; finding; jurat; duties of judge; case file not to be open. The

judge of the district court shall require the parents to exhibit or file with the court evidence of their lawful marriage. The judge of the district court shall require the parents to exhibit or file with the court evidence of the birth of said child or children. If said judge finds that the birth of said child or children has been registered in the state of Kansas as illegitimate and the parents of said child or children subsequently have become lawfully married to each other he or she then shall affix such jurat to each affidavit and forward both affidavits to the state registrar of vital statistics. Further, said judge shall return all other evidence and exhibits to the parents of said child or children. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

History: L. 1963, ch. 253, § 3; L. 1967, ch. 205, § 2; L. 1976, ch. 145, § 128; Jan. 10, 1977.

Research and Practice Aids:

Health—34.

C.J.S. Health §§ 26, 28.

Law Review and Bar Journal References:

"Domestic Relations: Kansas Recognizes Unadjudicated Natural Father May Render Valid Adoptive Consent," Dan Muchow, 19 W.L.J. 167, 170 (1979).

23-128. Artificial insemination; performance; consent. The technique of heterologous artificial insemination may be performed in this state at the request and with the consent in writing of the husband and wife desiring the utilization of such technique for the purpose of conceiving a child or children.

History: L. 1968, ch. 272, § 1; July 1.

Law Review and Bar Journal References:

Law permits heterologous artificial insemination and legitimatizes children; problems of adultery and other criminal conduct disappear with statutory compliance; performance of artificial insemination not limited to physician, M. Martin Halley, 69 J.K.M.S. 487, 489 (1969).

Discussion of the Kansas artificial insemination law, Lynn R. Johnson, 8 W.L.J. 374, 380 (1969).

23-129. Same; child is natural child at law. Any child or children heretofore or hereafter born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived child of the husband and wife so requesting and consenting to the use of such technique.

History: L. 1968, ch. 272, § 2; July 1.

may be located, and to make
tical supplies and transplant

ere law enforcement officers
it to subsection (1) or subsec-
of any jurisdiction within a
by K.S.A. 19-3524 and amend-
powers as law enforcement
normal jurisdiction when a
made by law enforcement of-
ance is requested within such
arrest warrant, to the extent
it.

ere university police officers
it to subsection (3), university
powers of law enforcement
normal jurisdiction when a
made by law enforcement of-
istance is requested.

' has the meaning ascribed
endments thereto.

' means university police of-
ficer of any state edu-
cation and supervision of the state

oursuit, without unnecessary
ted a crime, or who is reason-
ted a crime.

2401a is hereby repealed.

ect and be in force from and
e book.

DOMESTIC RELATIONS

CHAPTER 114

House Bill No. 2012

(Amended by Chapter 115)

AN ACT enacting the Kansas parentage act; amending K.S.A. 23-102, 38-113, 38-126, 59-501, 59-2102, 59-3002, 65-2422 and 77-201 and K.S.A. 1984 Supp. 39-708c and repealing the existing sections; also repealing K.S.A. 23-124 through 23-127, 23-131, 23-132, 38-1101 through 38-1109, 59-2105 and 65-2424 and K.S.A. 1984 Supp. 38-113a.

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

New Section 1. Title and application of act. (a) Sections 1 through 20 shall be known and may be cited as the Kansas parentage act.

(b) Proceedings concerning parentage of a child shall be governed by this act except to the extent otherwise provided by the Indian child welfare act of 1978 (25 U.S.C. §§ 1901 et seq.).

New Sec. 2. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.

New Sec. 3. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

New Sec. 4. How parent and child relationship is established. The parent and child relationship between a child and:

(a) The mother may be established by proof of her having given birth to the child or under this act.

(b) The father may be established under this act.

(c) An adoptive parent may be established by proof of adoption.

New Sec. 5. Presumption of paternity. (a) A man is presumed to be the father of a child if:

(1) He and the child's mother are, or have been, married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death or by the filing of a journal entry of a decree of annulment or divorce.

(2) Before the child's birth, he and the child's mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) If the attempted marriage is voidable, the child is born

HOUSE BILL No. 2689

By Representative Whiteman

1-15

0016 AN ACT concerning birth certificates; relating to completion of
0017 certain information thereon and certain changes therein.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. (a) If a certificate of live birth is filed with the
0020 division of vital statistics and the items pertaining to the father
0021 are left blank, such blank items may be completed and, if the
0022 child is a minor, the child's surname may be changed to that of
0023 the father in accordance with this section upon the marriage of
0024 the child's parents to each other.

0025 (b) As soon as practicable after their marriage, any parents
0026 wanting to change their child's surname and complete the child's
0027 birth certificate as provided by subsection (a) shall make appli-
0028 cation therefor to a judge of the district court of this state and
0029 shall exhibit to or file with such judge evidence of the birth of the
0030 child and of their subsequent lawful marriage. In addition, both
0031 parents:

0032 (1) If residents of this state, shall appear before such judge
0033 and execute their affidavits in the presence of the judge, attesting
0034 that each is a parent of the child and that subsequent to the
0035 child's birth they have lawfully married each other; or

0036 (2) if both parents are nonresidents, shall file their affidavits
0037 with such judge, attesting to the facts specified in subsection
0038 (b)(1).

0039 (c) Upon receipt of an application, together with the required
0040 affidavits and evidence, as provided by subsection (b), the judge
0041 of the district court shall forward the affidavits to the state
0042 registrar of vital statistics if the judge finds the facts contained in
0043 the affidavits to be true. The judge shall return all other evidence
0044 and exhibits to the parents of the child. No case file shall be

0045 opened in any proceeding, and no record shall be made of any
0046 act of the court, pursuant to this section.

0047 (d) Upon receipt of any affidavits pursuant to subsection (c),
0048 the state registrar of vital statistics shall amend the child's birth
0049 certificate by completing the items pertaining to the father and
0050 changing the child's surname.

0051 (e) No fee shall be charged for any service performed pursu-
0052 ant to this section.

0053 Sec. 2. This act shall take effect and be in force from and
0054 after its publication in the statute book.

HOUSE BILL No. 2775

By Representative Whiteman

1-29

3-27-86

Mr. Van Buren

0018 AN ACT concerning parentage proceedings; amending K.S.A.
0019 1985 Supp. 38-1117 and 38-1125 and repealing the existing
0020 ~~section~~ sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*
0022 Section 1. K.S.A. 1985 Supp. 38-1117 is hereby amended to
0023 read as follows: 38-1117. The child shall be made a party to an
0024 action brought under this act. ~~The court may appoint an attorney~~
0025 ~~as guardian ad litem to represent the minor child shall be~~
0026 ~~represented by a guardian ad litem who shall be an attorney~~
0027 ~~appointed by the court.~~ The mother, each man presumed to be
0028 the father under K.S.A. 1985 Supp. 38-1114 and amendments
0029 thereto and each man alleged to be the father shall be made
0030 parties or, if not subject to the jurisdiction of the court, shall be
0031 given notice of the action in a manner prescribed by the court
0032 and shall be afforded the opportunity to be heard. If a man
0033 alleged or presumed to be the father is a minor, the court shall
0034 cause notice of the pendency of the proceedings and copies of
0035 the pleadings on file to be served upon the parents or guardian of
0036 the minor and shall appoint a guardian ad litem who shall be an
0037 attorney to represent the minor in the proceedings. If the parents
0038 or guardian of the minor cannot be found, notice shall be served
0039 in the manner directed by the court.

0040 ~~bill, ch. 2775 m1, r~~
0041 Sec. 2. K.S.A. 1985 Supp. 38-1125 is hereby amended to read
0042 as follows: 38-1125. (a) If the petitioner is not represented by
0043 counsel, the petitioner in an action to determine paternity shall
0044 be represented by: (1) The court trustee of the judicial district in
0045 which the action is brought, if the office of court trustee has been

S. Jud.
3/27/86

A-VI

0046 established in the county; (2) the department of social and
 0047 rehabilitation services or its contractor, if the action is brought
 0048 pursuant to part D of title IV of the federal social security act (42
 0049 USC §651 *et seq.*), as amended; or (3) the county or district
 0050 attorney of the county in which the action is brought, if the action
 0051 is not brought pursuant to part D of title IV of the federal social
 0052 security act (42 USC §651 *et seq.*), as amended, and there is no
 0053 court trustee in the county.

0054 (b) The court shall appoint a guardian ad litem to represent
 0055 the minor child if the court finds that the interests of the child
 0056 and the interests of the petitioner differ. In any other case, the
 0057 court may appoint such a guardian ad litem.

0058 (c) The court shall appoint counsel for any other party to the
 0059 action who is financially unable to obtain counsel.

0060 (e) (d) If a party is financially unable to pay the costs of a
 0061 transcript, the court shall furnish on request a transcript for
 0062 purposes of appeal.

0063 ~~Sec. 2-3.~~ K.S.A. 1985 Supp. 38-1117 ~~is~~ and 38-1125 are
 0064 hereby repealed.

0065 Sec. 3-4. This act shall take effect and be in force from and
 0066 after its publication in the statute book.

New Section 3. (a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such a judge or hearing officer affidavits, sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing office evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth registration in the manner provided by K.S.A. 1985 Supp. 38-1128 and amendments thereto and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

(d) This statute shall be part of and supplemental to the Kansas parentage act.

who subsequent to the birth of the child become lawfully married

,that they have become married subsequent to the birth of the child,

,that they have become married subsequent to the birth of the child,

and of the parents' subsequent marriage.

4

5

A
H

HOUSE BILL No. 2775

By Representative Whiteman

1-29

3-27-86

M. Van Buren

0018 AN ACT concerning parentage proceedings; amending K.S.A.
0019 1985 Supp. 38-1117 and 38-1125 and repealing the existing
0020 ~~section sections.~~

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

0022 Section 1. K.S.A. 1985 Supp. 38-1117 is hereby amended to
0023 read as follows: 38-1117. The child shall be made a party to an
0024 action brought under this act. ~~The court may appoint an attorney~~
0025 ~~as guardian ad litem to represent the minor child shall be~~
0026 ~~represented by a guardian ad litem who shall be an attorney~~
0027 ~~appointed by the court.~~ The mother, each man presumed to be
0028 the father under K.S.A. 1985 Supp. 38-1114 *and amendments*
0029 *thereto* and each man alleged to be the father shall be made
0030 parties or, if not subject to the jurisdiction of the court, shall be
0031 given notice of the action in a manner prescribed by the court
0032 and shall be afforded the opportunity to be heard. If a man
0033 alleged or presumed to be the father is a minor, the court shall
0034 cause notice of the pendency of the proceedings and copies of
0035 the pleadings on file to be served upon the parents or guardian of
0036 the minor and shall appoint a guardian ad litem who shall be an
0037 attorney to represent the minor in the proceedings. If the parents
0038 or guardian of the minor cannot be found, notice shall be served
0039 ~~in the manner~~ directed by the court.

0040 ~~bill,erh2775ml,r~~

0041 Sec. 2. K.S.A. 1985 Supp. 38-1125 is hereby amended to read
0042 as follows: 38-1125. (a) If the petitioner is not represented by
0043 counsel, the petitioner in an action to determine paternity shall
0044 be represented by: (1) The court trustee of the judicial district in
0045 which the action is brought, if the office of court trustee has been

S. Jud.
3/27/86

A-171

0046 established in the county; (2) the department of social and
0047 rehabilitation services or its contractor, if the action is brought
0048 pursuant to part D of title IV of the federal social security act (42
0049 USC §651 *et seq.*), as amended; or (3) the county or district
0050 attorney of the county in which the action is brought, if the action
0051 is not brought pursuant to part D of title IV of the federal social
0052 security act (42 USC §651 *et seq.*), as amended, and there is no
0053 court trustee in the county.

0054 (b) *The court shall appoint a guardian ad litem to represent*
0055 *the minor child if the court finds that the interests of the child*
0056 *and the interests of the petitioner differ. In any other case, the*
0057 *court may appoint such a guardian ad litem.*

0058 (c) **The court shall appoint counsel for any other party to the**
0059 **action who is financially unable to obtain counsel.**

0060 (e) (d) **If a party is financially unable to pay the costs of a**
0061 **transcript, the court shall furnish on request a transcript for**
0062 **purposes of appeal.**

0063 [^] ~~Sec. 2-3.~~ [^] K.S.A. 1985 Supp. 38-1117 is and 38-1125 are
0064 hereby repealed.

0065 ~~Sec. 3-4.~~ [^] This act shall take effect and be in force from and
0066 after its publication in the statute book.

New Section 3. (a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such a judge or hearing officer affidavits, sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing office evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth registration in the manner provided by K.S.A. 1985 Supp. 38-1128 and amendments thereto and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

(d) This statute shall be part of and supplemental to the Kansas parentage act.

4

5

A
VII