

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on February 24, 1988 in room 423-S of the Capitol.

All members were present except:

Representatives Adam, Jenkins, Peterson, Solbach, Vancrum and Wagon, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Judge James Buchele
Judge Patrick Caffey, Manhattan
Thomas R. Powell, City Attorney, Wichita
Jim Kaup, League of Kansas Municipalities
Judge Robert Thiessen, Administrative Judge, City of Wichita
Robert Watson, City Attorney, Overland Park
Phil Alexander, City Attorney, Hutchinson
Jim Robertson, Child Support Enforcement Administrator, S.R.S.
Ann McDonald, Court Trustee, Wyandotte County, Kansas City
Thomas D. Arnhold, Attorney, Hutchinson
Representative Donna Whiteman
Representative George Dean

Hearing on H.B. 2792 - Providing for registration of and service of process by process servers

Judge James Buchele explained this bill provides a method of registering general process servers with the Secretary of State, and the posting of a minimum bond and an annual registration fee.

Hearing on H.B. 2818 - Concerning municipal judges, providing training programs & examinations thereto

Judge Patrick Caffey testified this bill was submitted by Representative Knopp at his request. He explained this bill would provide training programs and examinations for municipal judges who have not been admitted to practice law in Kansas, and would also provide continuing judicial education and create a municipal training fund. He submitted a proposed amendment amending Section 1, (a) "A continuing judicial education program offering at least 10 hours of credit at least once in each year shall be provided at no expense to either the municipal judge or the municipality, and (c) designating that the Supreme Court may contract with another person or organization to administer the training or testing, (see Attachment I). He stated a sum in an amount not to exceed \$1.00 shall be assessed in each case filed in municipal court where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond, or a diversion, which fund shall be paid to the municipal judge training fund.

Jim Kaup testified the League of Kansas Municipalities was a proponent of the bill generally but they were opposed to the funding mechanism.

Thomas Powell testified in support of training for lay judges. He stated it would be unfair to ask the cities in Kansas that do not have lay judges to fund such training, (see Attachment II).

Judge Robert Thiessen stated the Kansas Municipal Judges Association had not issued a statement on this bill. He submitted a letter from Judge James E. Wells, Municipal Court Judge, City of Topeka, in which Judge Wells stated the City of Topeka was unfavorable to any testing program, and the \$1.00 funding proposal, (see Attachment III).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 423-S, Statehouse, at 3:30 ~~am~~ p.m. on February 24, 19 88

Robert Watson testified in opposition to Section 2 of H.B. 2818. He suggested that only municipal courts utilizing non-lawyer judges be required to generate revenue to fund their non-lawyers training, examination and certification program. He also submitted two technical objections to Section 2, (see Attachment IV).

Phil Alexander testified in opposition to H.B. 2818. The city of Hutchinson recovers approximately 25% of their court costs and feels it would not be appropriate to require them to help fund the training, examinations and certifications of non-lawyer judges.

The hearing was closed on H.B. 2818.

Hearing on H.B. 2920 - Dormant judgments of child support extended until the child is 18

Jim Robertson testified it is patently inequitable for the mere passage of time to absolve a parent of a debt owed to a child who is legally incapable of protecting his or her rights. He stated this bill would increase state revenues substantially by allowing the Child Support Enforcement department of S.R.S. to collect greater amounts of past due support which have been assigned to the state. He estimated passage of this bill would provide \$500,000 the first year and \$5.5 million over the next three to five years, (see Attachment V).

Ann McDonald testified the dormancy statute does not affect anyone that has their child support paid. She said there is a need to extend the time allowed for collection of child support. She strongly supported passage of this bill, (see Attachment VI).

Thomas D. Arnhold testified he favors a lengthy extension of the life of a judgment for child support. He would like to see the length a judgment lives or survives go from five years to 10, 15 or 20 years, (see Attachment VII).

The hearing was closed on H. B. 2920.

Hearing on H.B. 2866 - Judgment or order of court for support under Kansas parentage act

Ann McDonald testified this bill amends K.S.A. 38-1121 which directs the courts to enter orders for the support and education of the child whose parentage has been determined. The amendment simply adds the same wording as found in the Divorce Code, K.S.A. 60-1610, so that there is no difference between the two statutes in respect to provisions made for the children, (see Attachment VIII).

Representative Solbach moved to report favorably H.B. 2866 for passage. Representative Kennard seconded and the motion passed.

Hearing on H.B. 2860 - Child support and education under decree of divorce

Ann McDonald testified this bill would include children whose support was ordered prior to July 1, 1986 in K.S.A. 60-1610, (see Attachment IX).

A motion was made by Representative Solbach and seconded by Representative Buehler to report H.B. 2860 favorably for passage. The motion passed.

Hearing on H.B. 2884 - Concerning civil procedure, relating to dormant judgments of child support.

Representative Whiteman stated this bill provides seven years for the length of judgment.

The hearing was closed on H.B. 2884.

Hearing on H.B. 2869 - Interference with parent-child communications in domestic relations cases.

Representative Dean explained this bill would make repeated unreasonable denial or interference with communications between a child and the child's parent a material change of circumstances which would justify modification of a prior order of child custody.

The hearing was closed on H.B. 2869.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Thursday, February 25, 1988, at 3:30 p.m. in room 313-S.

HOUSE BILL NO. _____

By Representative Knopp

(By request)

AN ACT concerning municipal judges; providing training programs and examinations thereto; providing continuing judicial education; creating a municipal judge training fund.

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

Section 1. (a) Any person who holds the position of municipal judge in any city in this state on July 1, 1988, and any person who thereafter becomes a municipal judge in any city in this state who has not been admitted to practice law in Kansas, as required by subsection (b)(3) of K.S.A. 20-334, and amendments thereto, shall be permitted to temporarily commence the duties of office, conditioned that such judge becomes certified as being qualified to hold such office as provided herein. The supreme court shall provide by rule for a training program and an examination to ensure that each such municipal judge possesses the minimum skills and knowledge necessary to carry out the duties of such office. Such examination and training shall be administered without charge and such examination shall be given at least once each six months at a time and place determined by the supreme court. If a municipal judge fails to successfully complete such examination within 18 months after the date such judge takes office, such judge shall forfeit such judge's office and the municipal judge position previously held by such judge shall be vacant at the expiration of such 18-month period. A municipal judge who fails to successfully complete any examination may take such examination again at the next time it is offered prior to the expiration of such 18-month period. Any municipal judge who fails to successfully complete the examination within the prescribed time shall be ineligible to be a municipal judge, unless such person subsequently meets all the qualifications prescribed by subsection (b)(3) of K.S.A. 20-334, and amendments thereto.

Attachment I

(b) Any person who successfully completes the examination administered under this section or who meets all of the qualifications prescribed by subsection (b)(3) of K.S.A. 20-334, and amendments thereto, shall be certified by the supreme court as being qualified to hold such office. In order to continue to hold such office, such judge must attend at least 10 hours of continuing judicial education as approved by the supreme court or as provided by the Kansas municipal judges association in each calendar year. A continuing judicial education program offering at least 10 hours of credit at least once in each year shall be provided at no expense to either the municipal judge or the municipality.

(c) The supreme court shall administer the training, testing and continuing judicial education provided for herein, which shall be funded by the municipal judge training fund as provided for in section 2 of this act. The supreme court may contract with another person or organization for that service.

Sec. 2. Notwithstanding the provisions of K.S.A. 12-4112, and amendments thereto, a sum in an amount not to exceed \$1 shall be assessed in each case filed in municipal court where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond, or a diversion, which sum shall be paid to the municipal judge training fund which is hereby created. The specific amount of the assessment shall be fixed by order of the supreme court and shall apply uniformly to all cities. For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed against one individual arising out of the same incident, all such complaints shall be considered as one case. For the purpose of this section, parking violations shall not be considered as cases.

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

THE CITY OF WICHITA

THOMAS R. POWELL, Director of Law and City Attorney



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

February 23, 1988

The Honorable Robert S. Wunsch, Chairman
House Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

RE: House Bill 2818

Ladies and Gentlemen:

Your committee has pending before it House Bill No. 2818. This bill, if passed, would provide training at no cost to municipal court judges who have not been admitted to the practice of law. The training under the bill is to be funded by a one dollar assessment in each municipal court case from all cities in Kansas when there is a finding of guilty, a plea of guilty, a plea of no contest, forfeiture of bond or a diversion excluding parking tickets. Using the most recent figures available, the assessment in the City of Wichita would amount to approximately one hundred five thousand (\$105,000.00) dollars.

The concept of training lay municipal court judges is very worthwhile. However, it is unfair to ask the cities in Kansas that do not have lay judges to fund such training. The City of Wichita at a court cost of \$1.00 a case would, as indicated above, pay a large amount to fund the program and no benefit would flow back to the City of Wichita.

At the present time the City of Wichita has, by charter ordinance, chartered out from the state statute that sets court costs for municipal courts. The cost of operating the municipal court of the City of Wichita does exceed the court cost collected. The cost of operating the municipal court set forth in the City of Wichita 1988 budget is \$1,641,845.00. The court costs collected by the City of Wichita in 1987 amounted to \$454,299.00. The court costs collected for 1988 is not expected to increase above the amount collected in 1987 to any great degree. The increase in court costs that goes to the training program for lay judges will, in essence, amount to a subsidy by the taxpayers of the City of Wichita who must fund the difference between expenses of operating the municipal court and court costs collected.

Attachment II

The Honorable Robert S. Wunsch
Page 2
February 23, 1988

Another objection the City of Wichita has to the portion of House Bill No. 2818 that pertains to funding is that the City has just recently increased court costs for all persons who appear on a municipal docket by \$3.00. This \$3.00 assessment is used to fund a new public defender program for the municipal court of the City of Wichita. This \$3.00 increase funds three part-time public defenders at a cost of approximately \$54,000.00 per year. This is a recent increase in municipal court costs funds a worthwhile program that benefits the City of Wichita. A second increase in court costs at this time following up on a recent increase would be unjust and unfair.

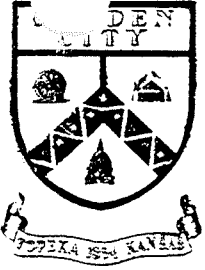
In addition, the means of funding proposed in House Bill No. 2818 raises serious legal questions as well as an issue of basic fairness. The \$1.00 court cost could be construed to be a tax that provides revenue for a general governmental function unrelated to the operation of a municipal court in cities that do not have lay judges. The collection of the \$1.00 court cost from municipal courts that derive no benefit from the charge could thus be unconstitutional.

In summary, it is recognized that the training of municipal court judges who are not trained as lawyers would be very beneficial to the public they serve and to the individual defendants who appear before them. However, a basic unfairness would exist if the money to pay for such training were to come from municipal courts that would receive no benefit. In the case of the City of Wichita, an assessment of \$105,000.00 that would come from the city's municipal court would be totally unfair since the city and its citizens would receive no benefit. In addition, the assessment would not be of direct benefit to cities that do not have lay judges and thus a question does rise as to whether such costs would be an unconstitutional tax as opposed to an appropriate court cost.

Very truly yours,

Thomas R. Powell
Director of Law

TRP:kh



CITY OF TOPEKA

Municipal Court
214 E. 8th Street
Topeka, Kansas 66603
Phone 913-354-1781

February 24, 1988

House of Representatives
State Office Building
State of Kansas
Topeka, Kansas 66603

Dear Sirs and Madams:

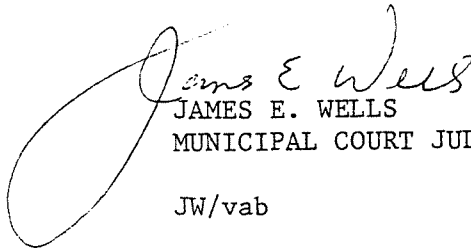
The City of Topeka is favorable to House Bill Number 2818 to the extent that training is important to all judges and their respective communities.

The City of Topeka is unfavorable to any testing procedure. The local appointing governing body is far more able to judge the abilities of their appointments both initially and down the road.

The City of Topeka is unfavorable to the \$1.00 funding proposal. Topeka citizens would be funding many of the small cities throughout the state.

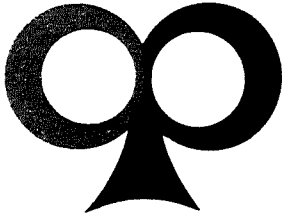
Finally, I believe this bill should be referred to committee to be reintroduced in the 1989 legislature for passage.

Very truly yours,


JAMES E. WELLS
MUNICIPAL COURT JUDGE

JW/vab

Attachment III



Overland Park

February 24, 1988

Members of the Judiciary Committee
of the Kansas House of Representatives
Kansas Statehouse
Topeka, KS 66612

RE: House Bill No. 2818

Ladies and Gentlemen:

On behalf of the City of Overland Park, we, the undersigned, hereby lodge our objection to Section 2 of House Bill No. 2818.

Our primary reason for objecting is the burden it places upon cities having lawyer judges, such as Overland Park, to collect revenue that will fund a program that is not a matter of statewide concern and from which the citizens of Overland Park will derive no benefit. It is anticipated that the City of Overland Park would be required to contribute approximately \$30,000. per year, based upon current volumes of cases in our municipal court. Our suggestion is that Section 2 be redrafted to require that only municipal courts utilizing non-lawyer judges be required to generate revenue to fund their non-lawyer training, examination, and certification program.

In addition, we have two technical objections to Section 2 of the bill:

1. Not every nolo contendere plea necessarily results in a finding of guilty, and unless a person is found guilty, no fee should be charged.
2. Bonds are often ordered to be forfeited but never collected from the surety. We assume the bill means "forfeiture and payment of bonds."

Law Department

City of Overland Park • Justice Center • 8500 Antioch • Overland Park, Kansas 66212 • Phone 913-381-5252

Attachment IV

Members of the Judiciary Committee
of the Kansas House of Representatives
February 24, 1988
Page Two

Thank you for your consideration of our concerns.

Yours very truly,

Robert J. Watson

Robert J. Watson
City Attorney

/s/ William Cleaver

William Cleaver
Administrative Judge
of the Municipal Court

RJW/nf

a2a-33-88

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

TESTIMONY IN SUPPORT OF EXTENDING DORMANCY
IN CHILD SUPPORT CASES

Case law in Kansas has traditionally upheld the principal that child support is a right that belongs to the child. Further, the courts have uniformly held that a parent may not waive or take any action which would compromise the child's right to receive support. Other statutes of limitation generally do not apply to eliminate children's rights until after they become an adult. Therefore, child support judgments should not be allowed to become dormant or void until after a child has the capacity to enforce his or her rights as an adult.

Current Kansas dormancy laws are among the shortest and most confusing in the nation. The majority of states either have no statute of limitations which prevent the enforcement of child support or have a much longer period before dormancy applies. In addition, existing Kansas case law requires courts to apply the dormancy statutes strictly and forbids the use of equitable powers to ameliorate harsh results. It is patently inequitable for the mere passage of time to absolve a parent of a debt owed to a child who is legally incapable of protecting his or her rights.

The proposed amendment would increase state revenues substantially by allowing CSE to collect greater amounts of past due support which have been assigned to the State. Passage of this legislation will provide projected revenues of one half a million dollars the first year and \$5.5 million over the next three to five years. Furthermore, collections on behalf of Non-ADC families would result in higher federal incentive payments, as well as preventing public assistance expenditures for those who might otherwise be forced to draw assistance. Increased collections on behalf of other states' IV-D agencies would also result in higher federal incentive payments.

Submitted by: James Robertson
CSE Administrator
Department of Social and
Rehabilitation Services
296-4188

JAR:tmd

Attachment V

HOUSE BILL 2920

This bill amends the dormancy statute, K.S.A. 60-2403, as it pertains to civil judgments arising from unpaid child support. Presently, Kansas law limits the collection of judgments to five years, unless execution is issued or the judgment is revived. It does not treat judgments for unpaid child support any differently than other civil judgments.

There is, however, a distinct need to extend the time allowed for collection of child support. From a legal perspective, there is a long tradition in state and federal law which gives preference to child support. In particular, garnishment statutes (See K.S.A. 60-717, 718) have allowed double or more of the amount withheld as compared with other judgment creditors. And the United States Supreme Court has recognized that exceptions and preference are given to family support obligations:

Moreover, in . . . Wissner [Wissner v. Wissner, 338 U.S. 655 (1950)] . . . the Court was careful to identify a possible exception for alimony and child support cases. Id., at 659-660. The suggested basis for this exception was that family support obligations are deeply rooted moral responsibilities, . . .

Rose v. Rose, 47 CCH S.Ct.Bull., p. B2571 (1987). The Rose case dealt with whether a disabled veteran, whose only income was VA benefits, could be cited for contempt for failure to pay child support by a state court. It was held that the state court did have jurisdiction and could hold the veteran in contempt.

As a practical matter, the children still often need the support. If the parents are divorced while the child is quite young, the child may still be a minor in need of support long after the five years have elapsed. Frequently the obligee does not have the opportunity or the

Attachment IV

HOUSE BILL 2920

means to keep the judgment alive either by execution or revivor. Often, the obligor has no assets or leaves the state. Often too, the obligee does not know that the time for collection is so limited and that she or he must file additional legal documents to extend the time.

Failure to pay the full amount of court ordered child support is a continuing scandal and decided detriment to our children. The U.S. Census Bureau estimates that half or more of the children born in this year will spend a significant portion of their childhood in a single parent home. The National Council of Juvenile and Family Court Judges in a pamphlet published by the Council states:

- * 40% of the single parent families headed by women receive less than one-half the amount ordered.
- * One-third NEVER receive any payment from the non-custodial parent.
- * Many parents pay less for child support than they do for a car payment.

Although in Kansas this unpaid child support becomes a judgment automatically, it does not help the child or the custodial parent if the legal ability to collect that judgment is cut off prematurely. Often, it is seven or ten years or more, before the non-custodial parent is located, or has "settled down" and acquired assets and the ability to pay current and back child support. This may occur just at the time the child has become a teenager with increased expenses who needs the additional money which could be provided by an additional monthly payment on arrears.

As an attorney and a child support enforcement officer, I strongly support passage of this legislation because I believe it is needed and will benefit the children of Kansas.

Submitted by: Anne McDonald, Court Trustee, 29th Judicial District

The Child Support Problem in America



Parents are responsible for the support of their children. Every child is entitled to love, protection and the provision of shelter, food, clothing, education and health care.

No child should be deprived because parents fail to meet their obligations. The child and the family are damaged emotionally, physically and financially by the parent who neglects the moral and legal responsibility of providing support.

Divorce, desertion and out-of-wedlock births have had a major impact on the number of children who receive welfare through the Aid to Families with Dependent Children (AFDC) program. Frequently, the taxpayer must assume the support of these children through AFDC and other welfare programs. The number of families receiving AFDC has a direct relationship to the problem of non-support.

The **absence of a parent** usually means a **lower standard of living** for the family. Working mothers whose income is insufficient to support the family are affected as well as welfare mothers. The children are deprived of adequate nutrition and medical care, economic security and emotional reinforcement because of the lack of adequate support from both parents.

The Facts

- More than four billion dollars in child support remains unpaid each year in the United States.
- 1.2 million divorces affect 2.2 million children each year.
- Nearly **half of the children** born in 1982 will spend a "**significant portion**" of their lives in a single parent family, according to the U.S. Census Bureau.
- 90% of single parent families are headed by women. Half of these families receive some form of public assistance.
- 40% receive less than one-half the amount ordered.
- One-third **never** receive any payment from the non-custodial parent.
- Fathers who are financially able pay far less than they can afford and are frequently in non-compliance. Men with incomes of \$30,000 to \$59,000 per year are found not to comply as often as men with incomes under \$10,000.
- Many parents pay less for child support than they do for car payments.





ARNHOLD & McEWEN

RANDALL H. McEWEN

THOMAS D. ARNHOLD

409 WOLCOTT BLDG.
P.O. BOX 703
HUTCHINSON, KS. 67504-0703
316-663-2802

TESTIMONY OF THOMAS D. ARNHOLD

For the last eight years, I have been a part-time attorney with the Child Support Enforcement Unit in Hutchinson, Kansas, of the Department of Social and Rehabilitation Services.

My primary job has been to collect unpaid child support from absent parents. During that time, a problem has occurred that affects my ability as an attorney to collect child support.

Currently, under KSA 60-2403, whenever a judgment for child support is established by our courts, that judgment for child support is in effect for a five year period. At the end of five years, that child support payment that is due and owing becomes "dormant" for a two year period. Thus, between five and seven years after a child support payment becomes due and owing, it is dormant, and in order to get it reinstated, or revived, I must file a motion to revive. Once the child support payment is over seven years old, then it can no longer be revived unless it has been revived by a garnishment, an execution, or a motion to revive. The 1984 case of Dallas vs. Dallas 236 Kan 92 says KSA 260-2403 applies to child support.

To give you an example, if a payment becomes due on January 1, 1981, it becomes dormant on January 1, 1986 unless I have filed a garnishment or an execution. I then must file a motion to revive if I wish to revive that child support payment. That motion must be filed no later than January 1, 1988. If the child support that is due and owing cannot be revived by January 1, 1988, then that child support is lost forever to the mother or the child and can never be collected.

The difficulty in doing a garnishment, or an execution, or one of these motions to revive, is locating the absent parent. If the absent parent has no job or no bank account, then I cannot garnish him and keep the judgment alive. The same is true on an execution. You must be able to locate him to attempt to execute on property, and it also is true for a motion to revive a dormant judgment. The absent parent, must be notified of the motion to revive.

The problem is that if an absent parent leaves the state or moves and cannot be found for a five to seven year period, then we have great difficulty in keeping the child support going.

Attachment VIII

Thus, a Kansas father or mother can avoid paying child support for a seven year period and then the child support is lost forever. If you have an absent parent, for example, who is to pay \$300 a month child support for children aged 2 and 3, and cannot be relocated until the children are about 16, you can obviously see that a considerable amount of child support is lost.

I am not representing the Department of SRS testimony today, but I have proposed this bill because I also do an extensive amount of family law litigation in my private practice. It simply is not fair to the parent who raises the child and also to the child itself, that his absent parent by hiding, can get out of paying child support. I would certainly favor a lengthy extension of the life of a judgment for child support. I would like to see the length a judgment lives or survives go from five years to 10 years, or perhaps even 15-20 years.

I hope that you will carefully consider the effect a bill extending the life of a judgment for child support will have upon the well being of the child and the parent and also consider the effect on the State's coffers. By this, I mean many of these parents who are raising children are raising them with monies provided by the Department of Social Rehabilitation Services because the absent parent has taken off and not paid their child support. If we could collect some of that money and put it back in the State coffers, that would certainly help.

Respectfully Submitted,

Thomas D. Arnhold for
Arnhold & McEwen

TDA:jco

HOUSE BILL 2866

This bill amends the Kansas Parentage Act, specifically K.S.A. 38-1121, which directs the court to enter orders for the support and education of the child whose parentage has been determined. The amendment simply adds the same wording as found in the Divorce Code, K.S.A. 60-1610, so that there is no difference between the two statutes in respect to provisions made for the children.

The amendment is necessary to remove any equal protection claims which could be raised on behalf of children of unwed parents under the former law and to conform to Kansas case law. In LaGrone v. LaGrone, 238 Kan. 630, Syl ¶ 1 (1986), the court stated an unwed parent should be treated the same as any other parent for the purpose of determining custody. If tested, this directive would surely apply to child support as well. If it did not, the argument could be made that the law treated the children of unwed parents (formerly called "illegitimate") differently, and worse, than it treated the children of divorced parents ("legitimate"). This would be a clear violation of equal protection laws.

When the Divorce Code was amended in 1986 to extend the obligation to pay child support past the age of 18 if the child was a high school student, the Parentage Act was not similarly amended. This bill adds that amendment, and makes it clear that it applies to any support order previously entered. (See, H.B. 2860, 1988 Session).

I support passage of this bill which makes a necessary provision for the support of many children in Kansas.

Submitted by:

Anne McDonald, Court Trustee for the 29th Judicial District of Kansas

Attachment VIII

HOUSE BILL 2860

This bill adds one phrase to K.S.A. 60-1610 which clarifies the legislative intent of an amendment passed in 1986. The amendment, H.B. 2157, extended the obligation to pay child support past the age of 18 if the child was still a high school student.

Subsequently, many attorneys for obligors have argued that the amendment did not apply to extend the obligation of parents divorced prior to its enactment. This argument is based on the rule of statutory construction which ordinarily prohibits retroactive application of a statute. (See, Lakeview Village, Inc. v. Board of Johnson County Commissioners, 232 Kan. 711, Syl. ¶8 (1983).)

It is my belief that this argument is contrary to the intent of the legislature and to Kansas case law. In Jungjohann v. Jungjohann, 213 Kan. 329, Syl. ¶1 and 3 (1973), the court made it clear that a child has no vested right in future child support. If the child has no vested right, then neither does the parent have a liability which would be impaired by a so-called retroactive application. This argument is articulated well in Rosher v. Superior Court In and For Los Angeles County, 9 Cal.2d 556, 71 P.2d 918 (1937).

Further, common sense and practical experience tell us that thousands of children have parents who divorced after the legal and social barriers were lessened in the early 1970's. The late 1970's brought double digit inflation, which greatly increased the cost of rearing children. We also know that many children reach the age of 18 before they graduate from high school; presumably they cannot hold a full time job to support themselves and complete their education at the same time. Hence they remain dependent upon their parents during the very interval addressed by the amendment.

Attachment IX

HOUSE BILL 2860

This bill adds one phrase: ". . . including those [children] whose support was ordered prior to July 1, 1986." This phrase makes it clear that all Kansas children are entitled to the benefit the 1986 amendment was intended to grant.

As a professional child support enforcement officer and attorney, I support the enactment of H.B. 2860. It will provide much needed support for children of divorced parents and it will reduce time and expense resulting from litigation of the question, thus serving judicial economy.

Submitted by:

Anne McDonald, Court Trustee for the 29th Judicial District of Kansas