Approved ~~March 30, 1989~~
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Martha Jenkins at
Vice Chairperson

3:30 ~~a.m.~~/p.m. on March 14, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Fuller, Hochhauser, O'Neal, Peterson,and Sebelius, 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:

Senator Eric Yost
Jamie Corkhill, Attorney, Child Support Enforcement, S.R.S.

HEARING ON S. B. 34 - Rebutting the presumption of paternity, court ordered tests

Senator Yost testified S.B. 34 amends the statutes dealing with presumption of paternity to provide that a presumption of paternity may be rebutted if biological tests indicate that there is either more than a 90 percent probability that the presumed father is not the actual father or more than a 90 percent probability that another contestant is the actual father. The bill also amends the statute dealing with bringing a paternity action to provide that if the presumption can be rebutted and paternity has not been previously determined through blood tests, then an action may be brought at any time during the child's minority. He said Sec. 2 of the bill is controversial and could be deleted.

Jamie Corkhill, Attorney, Child Support Enforcement, S.R.S., testified in opposition to S. B. 34. She said the proposed amendments to the Kansas Parentage Act undermine the carefully reasoned structure of that act and introduce elements of ambiguity and uncertainty into every proceeding related to paternity, see Attachment I.

The hearing was closed on S.B. 34.

HEARING ON S.B. 51 - Facsimile considered original document in certain situations

Senator Eric Yost testified S.B. 51 would amend the original document rule by allowing telefacsimile communications to be introduced into evidence by a proponent or opponent as the writing itself. A telefacsimile communication is defined in the bill to mean the use of electronic equipment to send or transfer a copy of an original document via telephone lines.

There being no other conferees, the hearing on S.B. 51 was closed.

Representative Whiteman moved to approve the minutes of February 23 and February 27, 1989. Representative Lawrence seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:05 p.m. The next meeting will be Wednesday, March 15, 1989, at 3:30 p.m. in room 313-S.

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

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: March 14, 1989

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jamie Corkhill	Box 497, Topeka	SRS (CSE)
Ron Smith	Topeka	Ks Bar Assoc

Department of Social and Rehabilitation Services

Winston Barton - Secretary

Statement Regarding Senate Bill 34

One of the primary responsibilities of the SRS Child Support Enforcement Program is to help children by establishing paternity and support orders for them. In 1988 alone, we established paternity in nearly 1600 cases, and we project even greater numbers in future years. From this perspective, SRS opposes passage of this bill.

The effects of the Kansas Parentage Act reach far beyond clear-cut paternity actions. Changes in the fundamental elements of the Parentage Act, such as the presumptions of parentage and the statute of limitations, have the potential of affecting an enormous number of people. Every divorce that includes a child support order, for example, requires the fundamental determination that the parent-child relationship exists. The benefit of any change in the Parentage Act, therefore, must be measured against the widespread effect the change will inevitably have.

With regard to Section 1 (page 2, lines 49-57), our field attorneys who reviewed the proposed language related to non-paternity (lines 51 and 52) expressed concern that this wording is inconsistent with the typical wording of blood test results excluding a man as a possible father. Usually an exclusion is phrased in absolute terms, without reference to probabilities, because the child has a genetic marker which could not have been inherited from either the mother or the man in question. The attorneys therefore found the reference to a 90% probability in that context confusing.

This committee may wish to consider whether attorneys inexperienced in paternity litigation, or perhaps even a judge, would tend to treat a statutory percentage as the benchmark for deciding whether or not a man is the father instead of recognizing that it is simply the threshold for shifting the burden of proof. Ironically, an error of this kind is likely to be unfair to a man wrongly named as the father, as test results of less than 90% probability of paternity are increasingly rare.

In Section 2 of the bill, the proposed change in the statute of limitations in subsection (a)(2) (lines 64-67) would not prevent the work, inconvenience, and expense of preparing for trial, since the statute of limitations issue cannot not be resolved until after the test results are known. It is normal practice for attorneys to conduct discovery and investigate the parents' income pending receipt of the test results so that a support order for the child may be entered quickly if the results are positive. The bulk of trial preparation having been completed, it makes sense for the court to consider all the evidence and to rule on the merits of the case.

It is vital that any statute of limitations be clear, yet proposed subsection (a)(2) is not. Is an action for a child over 18 timely filed against a presumed father if two sets of tests are conducted and the results are 89% (below the 90% threshold) and 91% probability of paternity? The proposed amendment provides no guidance whatsoever. Any advantage of adding subsection (a)(2) is slight and does not warrant the added complexity and ambiguity.

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Attachment I

The purpose of the language proposed in Section 3 (lines 104-105) seems to be to insure that all desired testing is conducted, however, the mandatory language would hamstring the judge. If the judge has no discretion whatsoever to decline to order additional tests, this section could easily be used for delay. As a practical matter, nearly all judges now order whatever tests are requested, but those requests are tempered by the knowledge that the judge has the discretion to refuse unreasonable requests.

There has been an unsettling trend in recent years of courts allowing parties in a divorce to come back, often years later, to reopen and litigate issues of paternity. Viewed from the child's perspective, SRS cannot regard this trend as beneficial to most children's well-being, as it injects more uncertainty and conflict into family relationships. A minor child must surely suffer when he learns that the man he has known as his father is not really his father. This is one of the reasons that Kansas law has historically given great weight to the presumption that the husband is father to a child born during the marriage. The premium this bill places upon biological testing, making multiple tests mandatory upon request and placing the tests on an equal footing with an existing support order, does a disservice to children to the extent that it encourages collateral attacks upon existing court orders and parent-child relationships.

Several of our field attorneys have expressed concern that this bill's overall effect would be to increase the number of collateral attacks upon existing support orders, especially in divorces where the paternity issue was not raised and in default judgments. These collateral attacks exact a price in the administration of the Child Support Enforcement Program, as every motion to set aside an existing order must be immediately defended and, if the order is set aside, the issue of paternity litigated. The unpredictability of these motions makes rational management of legal resources difficult, and every hour spent on defense is an hour not spent establishing new orders or collecting support that is owed. If 50 such motions are filed a year (a conservative estimate), the cost to the State would be approximately $68,000 annually.

In conclusion, the proposed amendments to the Kansas Parentage Act undermine the carefully reasoned structure of that act and introduce elements of ambiguity and uncertainty into every proceeding related to the determination of paternity. For this reason, SRS urges that this bill not be passed.

Jamie L. Corkhill
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