

Approved April 26, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael O'Neal at
Chairperson

12:00 noon a.m./p.m. on March 28, 19 90 in room 432-S of the Capitol.

All members were present except:

Representatives Fuller, Moomaw, Peterson, Shriver and Vancrum, 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:

Susan Hardin of Prairie Village
Melissa Ness, Kansas Children's Service League
Matt Lynch, Judicial Council
Robert C. Barnum, Commissioner of Youth Services, Kansas Department of Social and Rehabilitation Services

HEARING ON SB 431 Enacting the Kansas adoption and relinquishment act

Susan Hardin, Prairie Village, testified under New Sec. 25 the necessity for a parent's consent or relinquishment can be determined and parental rights terminated if appropriate grounds are established. The Probate Court, upon request, can examine a child's home situation to determine if adoption is a viable alternative in cases where the Child Code is unable to protect the child, see Attachment I.

Melissa Ness, Kansas Children's Service League, submitted testimony in support of SB 431, see Attachment II.

Matt Lynch, Judicial Council, informed the Committee SB 431 consolidates the adoption and relinquishment statutes. Adoptions are divided into four basic categories. In addition to adult adoptions there are three categories relating to the adoption of minor children: agency adoptions, independent adoptions and stepparent adoptions.

Mr. Lynch stated the Family Law Advisory Committee studied the adoption laws and proposed 1989 SB 292. SB 292 was studied and amended by the Interim Judiciary Committee and reintroduced as 1990 SB 431. The Interim Judiciary Committee changed the term "natural" to "birth" when referring to parent, child or mother wherever it appears in the bill; reduced the consent or relinquishment waiting period from 24 hours to 12 hours and made the waiting period applicable only to the mother; provided that fees for legal or other professional services would be evaluated by the court in terms of what is customary "where services are performed"; added the provision that when one parent relinquishes with the belief the other parent will relinquish, and the other parent does not, the parental rights of the relinquishing parent are not terminated; and in New Sec. 20 that the hearing shall be heard and determined by the court as expeditiously as possible. The Interim Committee also added to Sec. 34 that health insurance benefits also apply to a child adopted within 90 days of birth. Such benefits shall include delivery expenses at birth of the birth mother of a child adopted within 90 days of birth. The Senate Judiciary Committee added a subsection (b)(3) to New Sec. 16 which would allow venue in an agency adoption to be in the county where the child placing agency is located so long as the child was a resident of Kansas prior to receipt of custody by the agency; an Agency Consent to Adoption of Minor Child form on page 17; and a subsection (b) to New Sec. 12 that is intended to codify current practice of S.R.S. in regard to facilitating communication between genetic parents and adopted children. The Senate Committee also amended the provision for fees for legal and other professional services so that such fees shall be evaluated in terms of what is reasonable in the county of venue, see Attachment III.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 423-S, Statehouse, at 12:00 noon a.m./p.m. on March 28, 1990.

Mr. Lynch requested the Committee amend line 37 to strike the word "or" and add after the word "guardian" the words "or agency".

Robert C. Barnum, Commissioner of Youth Services, Kansas Department of Social and Rehabilitation Services, testified that passage of SB 431 will be a major step in assuring that children are placed in appropriate adoptive families and are better protected; that the rights of relinquishing and consenting parents are addressed; and that adoptive parents have knowledge of the child's background, genetic and health history, see Attachment IV.

The Chairman requested S.R.S. rewrite New Section 12(b) to include that upon the request of the adoptee and the adoptive parents S.R.S may contact the genetic parents in the event of health or medical needs.

The Committee meeting was adjourned at 1:20 p.m.

Testimony before the House Judiciary Committee
March 28, 1990
Presented by Suzanne Hardin, 8229 Nall, Prairie Village

Chairman O'Neal and members of the House Judiciary Committee:

While all sections of SB 431 are significantly important, I wish to address Section 25. Under this section, the necessity for a parent's consent or relinquishment can be determined and parental rights terminated if appropriate grounds are established.

Two years ago I became legal guardian of two grandchildren who were 10 and 7 years old. For years I had watched them barely survive in their extremely dysfunctional environment. They did not qualify as Children In Need Of Care - they were among the children who are constantly lost between the cracks. My only recourse was to file for guardianship to remove them from their cocaine and alcohol addicted parents. I only wish SB 431 had been law two years ago - I would have gratefully petitioned for adoption.

I would like to run through a brief scenario that will help explain the significance of Section 25.

Let's say the birth parents of a child are heavily involved in illegal drugs, to the point of not being able to adequately see to the needs of their child. We can identify with this situation because of the increasing numbers of birth parents who are addicted to drugs. The child is in a very dysfunctional environment. He is emotionally and physically ignored, rejected, and neglected. He lacks security and continuity, the two basic ingredients for him to grow and develop optimally. He suffers from anxieties and depression, and is seriously behind academically and socially.

Now the question - what do we do with this child? How can he be removed from his damaging environment? Well, he won't qualify as a Child In Need Of Care. So, how do we protect him, and the hundreds like him? Healthy members of his extended family, or any healthy person can be granted custody with legal guardianship. Let's say that happens. He's placed with his guardian. Two years go by. His parents have not made a turn around; they have failed to assume their duties as parents to their son. The legal guardian, the child's therapist - these children do require extensive therapy - and the medical director of a reputable drug rehabilitation center agree that adoption is now the only alternative. The child needs a permanent and predictable environment. Where will the petition

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page 1 of 1 Jud Com.

Attachment I

for adoption be filed? Probate Court? Not as the current Adoption Code reads because at least one birth parent must give consent to the adoption. Neither of these parents are consenting. You know, one of the last things addicts give up is denial - they see themselves as functioning and responsible. So, ironically, the petition must be filed under the Child In Need Of Care Code. The Child Code couldn't handle this case originally, but now it's the only place where the petitioner can go because the birth parents will not consent to the adoption.

Now the request for adoption requires two complicated processes instead of one. This petitioner must now ask Juvenile Court to do a severance through CINC (Child In Need Of Care Code). CINC now is required to duplicate many processes which Probate Court did in granting the guardianship. If, after the first hearing, the evidentiary(ies), assessments of the parents and guardian, interviews with the child, possible court ordered psychological testings, the adjudication and the dispositional, severance is finally granted, the guardian must return to Probate Court for additional hearings and the final disposition. The current adoption laws fail to serve an increasingly large number of children. The process creates additional stress, delays and most definitely additional costs. It is not unusual for those seeking guardianship to have \$10,000 in legal fees.

What I am trying to point out is - SB 431 will allow wholesome, loving people, including members of the child's extended family, to ask Probate Court to examine a child's home situation to determine if adoption is a viable alternative in cases where the Child Code is unable to protect that child. This bill is able to reach these children early, placing them in the permanent, stable homes they are so deserving of.

Thank you.

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Suite 212
4th & State Ave.
P.O. Box 17-1273
Kansas City, KS 66117
(913) 621-2016

**Topeka
District Office**
2053 Kansas Ave.
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Topeka, KS 66605
(913) 232-0543

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District Office**
705 Ballinger
Garden City, KS 67846
(316) 276-3232

Field Offices

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217 Southwind Place
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417 Commercial
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Emporia, KS 66801
(316) 342-8429



**SB 431 AN ACT CONCERNING ADOPTION
TESTIMONY BEFORE HOUSE JUDICIARY**

MARCH 22, 1990

BY: MELISSA NESS, JD,MSW

Kansas Children's Service League is a statewide not for profit child welfare agency in Kansas. We are licensed as a child placing agency in Kansas and Missouri to provide adoption services. Although we provide a variety of services based on community need such as parent education, foster care, mediation, and pregnancy counseling, we are still closely identified as being one of the oldest adoption agencies in the state. In fact we have been involved in finding permanent homes for children since 1893. KCSL is a charter member of the Child Welfare League of America and accredited by the Council on Accreditation for Families and Children.

We appear today in support of SB 431.

Our adoption program consists of coordinated services offered to the child, the child's biological parents and the adoptive parents. It is implemented in a way that the best interests and the welfare of the child are our primary concern. Placement of the child with an adoptive family having the same or similar cultural and racial background as the child is also a high priority. Our adoption services are delivered through our offices located in Emporia, Manhattan, Wichita and Garden City. In addition we have one of the few black adoption programs in the country located in Kansas City.

The numbers of children we have been placing for adoption has dropped. In 1988 we placed 42 children compared to around 60 in 1986. We provided post-placement services to 100 children in 1988, adoptive family development services to 216 families and adult adoptee searches for 56 adults. We emphasize and put energy in giving priority to placing children with special needs. We currently have 35 families available for placing children.

There are several provisions of the bill which we believe bring the rights and welfare of the various parties involved in the adoption process more in balance. They include:

*Validity of the consent. A consent is final when executed unless the consenting party...proves by clear and convincing evidence that [it] was freely and voluntarily given. (Sec. 4 (a))

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*...a minor parent shall have the advice of independent legal counsel as to the consequences of the consent or relinquishment prior to its execution. The attorney providing independent legal advice to the minor parent shall be present at the execution of the consent or relinquishment. (Sec. 5)

*Reasonable fees...(Sec. 11 (a) et seq.)

*The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parties in interest..."parties in interest" shall not include genetic parents once a decree of adoption is entered. (Sec. 12)

*The addition of the penalty section of K.S.A. 65-509 regarding the advertising around adoption. (Sec. 13 (d))

We believe the efforts of the Family Law Advisory Committee, the Special Interim Committee on Judiciary and the work of the legislative body to date have resulted in a balanced piece of legislation.

We strongly encourage the committee to adopt SB 431 as amended by the Senate Judiciary.

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The comments below were made in connection with the original proposal of the Family Law Advisory Committee as reflected in 1989 SB 292. Senate Bill 292 was studied and amended by the Interim Judiciary Committee and reintroduced as 1990 SB 431. Senate Bill 431 was subsequently amended by the Senate Judiciary Committee. Additions have been made to the original comments to indicate where amendments by the Interim and Senate Committees have been made.

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Attachment III

INTRODUCTION

During the 1987 session, Senate Bill No. 337 was introduced and referred to the Senate Judiciary Committee. Senate Bill 337 would have made a limited number of substantive changes and partially recodified the adoption statutes. Although no action was taken on Senate Bill 337, it served as the impetus for a study of the adoption laws by the Family Law Advisory Committee. The members of the Family Law Advisory Committee are:

- Judge Herbert W. Walton, Olathe
- Constance M. Achterberg, Salina
- Judge Sam Bruner, Olathe
- John Johntz Jr., Olathe
- Dr. Paul C. Laybourne, Lake Quivira
- Phyllis H. Macey, Topeka
- Professor Nancy Maxwell, Topeka
- Judge Jerry Mershon, Manhattan
- Brian J. Moline, Topeka
- Judge Wayne Phillips, Kansas City
- Judith C. Runnels, Topeka

In the course of its study, the advisory committee has received invaluable assistance from Sue McKenna, Peggy Baker and Barbara Stodgell of the Department of Social and Rehabilitation Services and Nancy Woodworth, an attorney with the firm of Stumbo, Stumbo, Hanson & Hendricks.

The proposed act which follows is the result of the advisory committee's study. Consolidation of the adoption and relinquishment statutes has been a primary goal of the committee. In addition to its new sections, the proposed act replaces existing provisions in articles 21 and 22 of chapter 59 and in chapters 38 and 65. In the hope of achieving greater clarity as to the application of particular provisions, the proposed act is divided into areas denominated as general provisions, adoption of minor child and adult adoptions. Additions to or departures from the present provisions are noted in the comments to the individual sections.

As Amended by Senate Committee

Session of 1990

SENATE BILL No. 431

By Special Committee on Judiciary

Re Proposal No. 31

12-21

12 AN ACT concerning adoption; enacting the Kansas adoption and
13 relinquishment act; providing that certain health policies and con-
14 tracts contain coverage with respect to adopted children; amending
15 K.S.A. 38-1206, 40-2,102 and 59-2203 and K.S.A. 1989 Supp. 65-
16 504 and repealing the existing sections; also repealing K.S.A. 38-
17 113, 38-114, 38-124, 38-125, 38-126, 38-127, 38-128, 59-2101, 59-
18 2103, 59-2104, 59-2277, 59-2279, 59-2280 and 65-509 and K.S.A.
19 1989 Supp. 38-1129, 59-2102, 59-2278, 59-2278a, 59-2278b and
20 59-2278c.

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

23 New Section 1. Sections 1 through 32 shall be known and may
24 be cited as the Kansas adoption and relinquishment act.

New Sec. 2. As used in sections 1 through 32:

(a) "Adult adoption" means the adoption of an individual who has attained the age of majority;

(b) "agency adoption" means the adoption of a minor child where an agency has the authority to consent to the adoption;

(c) "independent adoption" means the adoption of a minor child where the child's parent or parents, legal guardian or nonagency person *in loco parentis* has the authority to consent to the adoption; but does not include a stepparent adoption;

(d) "stepparent adoption" means the adoption of a minor child by the spouse of a parent with the consent of that parent;

(e) "residence of a child" and "place where a child resides" means:

(1) The residence of the child's mother if the child's parents are not married;

(2) *the residence of the child's father, if the father has custody and the child's parents are not married;*

(2 3) the residence of the child's father if the child's parents are married; or

(3 4) the residence of the child's mother if the child's parents are married, but the child's mother has established a separate, legal residence and the child resides with the mother;

(f) "agency" means any public or private entity organized pursuant to Kansas law, or organized pursuant to the laws of the jurisdiction where located, having for its purpose the care and maintenance of children, being authorized to place children for adoption, consent to the adoption and to stand *in loco parentis* to such children until they are adopted or reach majority; and

(g) "person *in loco parentis*" means an individual or organization vested with the right to consent to the adoption of a child pursuant to relinquishment or an order or judgment by a district court of competent jurisdiction.

New Sec. 3. Any adult, or husband and wife jointly, may adopt any minor or adult as their child in the manner provided in sections 1 through 32, except that one spouse cannot do so without the consent of the other.

The committee has divided all adoptions into four basic categories. In addition to adult adoptions, there are three categories relating to the adoption of minor children: agency adoptions, independent adoptions and stepparent adoptions. Requirements vary with the type of adoption involved and it is hoped that the mere act of defining the different types of adoptions will aid courts and practitioners in identifying the provisions of law which are relevant to any given adoption.

The committee saw no need to restrict adoption petitioners to Kansas residents as was contemplated by Senate Bill 337. However, where the petitioner is a nonresident, the committee wished to insure that there is an appropriate contact with this state before an adoption can proceed in Kansas. Consequently, the committee requires in section 16 that either the petitioner or the child to be adopted is a resident of Kansas. In the definition in subsection (e), the committee has followed the common law rules for determining a child's residence.

The definition of agency in subsection (f) is intended to cover licensed, private agencies as well as the department of social and rehabilitation services.

The definition in subsection (g) is taken from current K.S.A. 38-124 relating to relinquishments.

This section is identical to K.S.A. 59-2101.

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New Sec. 4. (a) Consent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If consent is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the consenting person on the record of the consequences of the consent. A consent is final when executed, unless the consenting party; prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party.

(b) Consent in all cases shall have been executed ~~no sooner~~ *not more* than six months prior to the date the petition for adoption is filed.

34 Comment

Subsection (a) parallels subsection (c) of K.S.A. 1987 Supp. 59-2102 with some modifications.

As to consents acknowledged before a judge, the subsection imposes on the court the duty to advise the consenting person of the consequences of the consent. K.S.A. 38-127 imposes a similar duty where the relinquishment of a child to SRS is acknowledged before the court. The committee has added the requirement that the court carry out this duty on the record.

In In Re Adoption of Baby Girl H, 12 Kan.App.2d 223 (1987), a judge acknowledged a consent at the hospital some time within approximately one hour of the child's birth. While K.S.A. 59-2102(c) purportedly makes a consent acknowledged before a judge irrevocable, the majority opinion in the Court of Appeals' decision found a legislative intent that the judge determine that such a consent is freely and voluntarily given and remanded the case to the trial court to make findings on this issue. The majority opinion also recommended that the consent be given on the record. It is the belief of the committee that parties and attorneys should be afforded greater confidence in consents acknowledged before a judge and the additional requirements of proposed subsection (a) will assist in this regard.

Presently, 59-2102 (c) allows a consent to be revoked for any reason prior to filing. The committee has deleted this provision on the basis it serves no particular purpose and promotes an unnecessary race to the courthouse to protect an otherwise valid consent.

To promote stability for children who are the subject of adoptions, the proposal would add the requirement that the party attacking a consent show by "clear and convincing evidence" the consent was not freely and voluntarily given.

Subsection (b) was added to prevent potential abuse of "stale" consents by providing some indication the consenting party had knowledge of the relevant circumstances at the time adoption was contemplated and the consent was given.

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Att III

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New Sec. 5. Minority of a parent shall not invalidate a parent's consent or relinquishment, except that a minor parent shall have the advice of independent legal counsel as to the consequences of the consent or relinquishment prior to its execution. The attorney providing independent legal advice to the minor parent shall be present at the execution of the consent or relinquishment.

§5 Comment

Subsection (d) of K.S.A. 1987 Supp. 59-2102 states "Minority of a parent shall not invalidate a parent's consent." K.S.A. 38-113 and 125 contain similar provisions as to relinquishments.

Minors are afforded legal protection in regard to other decisions and it appears to the committee that the decision to give up a child merits attempts at protection as well. The proposed subsection would require independent legal counsel for a minor and the presence of the minor's attorney at the time the instrument is executed.

Questions naturally arise as to the means for providing and paying for such independent counsel. The committee considered the possibility of having independent counsel appointed by the court. However, at the time independent counsel is needed the matter will not be pending before the court. The committee also considered the possibility of court-approved lists of eligible attorneys but the committee recognized a danger in any such lists being exclusive, particularly in regard to consents or relinquishments which may be executed out-of-state. As a practical matter, the petitioners for adoption or the child-placing agency will be responsible for the costs of such independent counsel. While there are concerns with the appearance of the petitioners or agency providing the independent counsel, there is also an incentive for such persons to insure a valid instrument is obtained and, consequently, to provide minors with attorneys who are truly independent of the petitioner or agency.

The proposal requires the minor's attorney to be present at the time of execution in light of the fact that advice provided at an earlier time may diminish in value due to the intervening passage of time and birth of the child.

The section applies to natural fathers as well as natural mothers. Where there is an actual conflict between the natural parents, independent counsel for each minor parent would be necessary.

A-III

New Sec. 6. A consent or relinquishment may not be given by the mother until 12 hours after the birth of a child and any consent or relinquishment given before such time is voidable.

36 Comment

Presently, the time at which a consent or relinquishment may be given is not statutorily addressed. The committee recognizes that the 24-hour waiting period will not assure a free and voluntary consent in every case, however, it does add a degree of protection that is not mandated under the present statutes. The committee was reluctant to suggest a significantly longer waiting period due to potential problems relating to temporary custody of the child.

Again, it should be noted the section applies to consents or relinquishments by fathers as well as mothers.

[The Interim Committee reduced the waiting period from 24 to 12 hours and made the waiting period applicable only to the mother.]

37 Comment

The language in this section is taken from Illinois (S.H.A. ch. 40, ¶ 1512) and involves a matter not currently addressed by Kansas statutes. Kansas case law states that ". . . a consent which complies with Kansas law will support a Kansas adoption regardless of whether it complies with the law of the state where it is executed." In Re Adoption of Gates, 6 Kan.App.2d 945, 946, 636 P.2d 818 (1981). The case law is not as clear as to the validity of a consent where there is compliance with the law of the state of execution, but some deficiency under Kansas law. Gates, supra; In Re Adoption of Trent, 229 Kan. 224, 624 P.2d 433 (1981); Jones v. Jones, 215 Kan. 102, 523 P.2d 743, cert. denied 419 U.S. 1032 (1974).

38 Comment

This section is virtually identical to present 59-2103(a) and (b). Subsection (c) of 59-2103 has been deleted as an unnecessary reference to visitation rights which exist under K.S.A. 38-129.

[The Interim Committee changed the term "natural" to "birth" when referring to parent, child or mother wherever it appears in the bill.]

41 New Sec. 7. (a) A consent or relinquishment executed and ac-
42 knowledged outside of this state, either in accordance with the law
43 of this state or in accordance with the law of the place where ex-
1 ecuted, is valid.

2 (b) Where a consent or relinquishment is signed in a foreign
3 country, the execution of the consent or relinquishment shall be
4 acknowledged or affirmed in accordance with the law and procedure
5 of the foreign country.

6 (c) If the person signing a consent or relinquishment is in the
7 military service of the United States, the execution of the consent
8 or relinquishment may be acknowledged before a commissioned of-
9 ficer and the signature of the officer shall be verified or acknowledged
10 before a notary public or by such other procedure as is then in
11 effect for such division or branch of the armed forces.

12 New Sec. 8. (a) Any person adopted as provided in sections 1
13 through 32 shall assume the surname of the petitioner or petitioners
14 for adoption, except that the court in its discretion may permit a
15 different surname when requested by the petitioner or petitioners.
16 When requested by the petitioner or petitioners, the court, in its
17 discretion, may change the given name or names of the person
18 adopted.

19 (b) When adopted, a person shall be entitled to the same personal
20 and property rights as a birth child of the adoptive parent. The
21 adoptive parent shall be entitled to exercise all the rights of a birth
22 parent and be subject to all the liabilities of that relationship. Upon
23 adoption, all the rights of birth parents to the adopted person, in-
24 cluding their right to inherit from the person, shall cease, except
25 the rights of a birth parent who is the spouse of the adopting parent.

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A. J. Guller
Att III-5

39 Comment

This section is identical to K.S.A. 59-2104.

310 Comment

The first sentence of this section is identical to K.S.A. 59-2278b and alerts practitioners to the provisions of the interstate compact on placement of children. The last two sentences of the section are new and are intended to promote compliance with the interstate compact. A similar amendment is recommended in K.S.A. 38-1206, the relevant section of the interstate compact.

311 Comment

This section closely follows K.S.A. 59-2278c. The phrase ". . .not to exceed customary fees in the locality for similar services by professionals of equivalent experience and reputation . . ." has been added in (a)(1). This is intended to discourage the marketing of children by limiting the profitability of such activity. Also, there are terminology changes from the present statute to clarify that this section applies to all adoptions.

[In regard to subsection (a)(1), the Interim Committee at the request of the Family Law Committee provided that fees for legal and other professional services would be evaluated by the court in terms of what is customary "where the services are performed." The Senate Committee amended the provision so that such fees shall be evaluated in terms of what is reasonable "in the county of venue." This approach was extended by the Senate Committee to subsections (a)(2) and (3). At a minimum, it appears inconsistent to have both phrases "in the county of venue" and "where the services are performed" in (a)(1). The Family Law Committee concluded that if legitimate, valuable services are performed out-of-state in connection with an adoption, it does not seem objectionable for the court to review such fees in terms of what is customary where the services are performed. To disallow such fees solely because they are beyond what is customary in the county of venue in Kansas would certainly inhibit certain nonresidents from being able to adopt in Kansas. We suspect that the underlying concern motivating the recommendation for the limiting provisions relates to the inability of the Kansas court to enforce its determinations in regard to fees which are clearly excessive or of questionable legitimacy. The addition of subsection (c) by the Senate Committee would appear to directly address this issue of enforcement.]

26 New Sec. 9. The district court shall report the adoption to the
27 state registrar of vital statistics.

28 New Sec. 10. Interstate placements of children shall comply with
29 the procedures contained in the interstate compact on placement of
30 children as set forth in K.S.A. 38-1202 and amendments thereto.
31 Any professional providing services related to the placement of chil-
32 dren for adoption who fails to comply with the provisions of the
33 interstate compact for the placement of children is guilty of a class
34 C misdemeanor. For the purposes of this section, "professional"
35 means any person who receives payment or compensation for pro-
36 viding services related to the placement of children for adoption.

37 New Sec. 11. (a) Except as otherwise authorized by law, no
38 person shall request, receive, give or offer to give any consideration
39 in connection with an adoption, or a placement for adoption, other
40 than:

41 (1) Reasonable fees *in the county of venue* for legal and other
42 professional services rendered in connection with the placement or
43 adoption not to exceed customary fees for similar services by profes-
44 sionals of equivalent experience and reputation where the services
45 are performed;

46 (2) reasonable fees *in the county of venue* of a licensed child-
47 placing agency;

48 (3) actual and necessary expenses, *based on expenses in the*
49 *county of venue*, incident to placement or to the adoption proceeding;

50 (4) actual medical expenses of the mother attributable to preg-
51 nancy and birth;

52 (5) actual medical expenses of the child; and

53 (6) reasonable living expenses of the mother which are incurred
54 during or as a result of the pregnancy.

55 (b) In an action for adoption, a detailed accounting of all con-
56 sideration given, or to be given, and all disbursements made, or to
57 be made, in connection with the adoption and the placement for
58 adoption shall accompany the petition for adoption. Upon review of
59 the accounting, the court shall disapprove any such consideration
60 which the court determines to be unreasonable or in violation of
61 this section and, to the extent necessary to comply with the pro-
62 visions of this section, shall order reimbursement of any consideration
63 already given in violation of this section.

64 (c) *Giving or receiving excessive fees or expenses in violation of*
65 *subsection (a) shall be a class E felony. Knowingly failing to list all*
66 *consideration or disbursements as required by subsection (b) shall*
67 *be a class B misdemeanor.*

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New Sec. 12. (a) The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parties in interest and their attorneys, and representatives of the state department of social and rehabilitation services, except upon an order of the court expressly permitting the same. As used in this section, "parties in interest" shall not include genetic parents once a decree of adoption is entered.

(b) *The department of social and rehabilitation services may contact the adoptive parents of the minor child or the adopted adult at the request of the genetic parents in the event of a health or medical need. The department of social and rehabilitation services may contact the adopted adult at the request of the genetic parents for any reason. Identifying information shall not be shared with the genetic parents without the permission of the adoptive parents of the minor child or the adopted adult.*

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New Sec. 13. (a) Except as otherwise provided in this section:

(1) No person shall advertise that such person will adopt, find an adoptive home for a child or otherwise place a child for adoption

(2) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to a woman to come to such person's maternity hospital or home during pregnancy or after delivery; and
(3) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to any parent, guardian or custodian of a child to place such child in such person's home, institution or establishment.

(b) The provisions of subsection (a)(1) shall not apply to a licensed child placement agency operating as authorized by Kansas law or to the department of social and rehabilitation services.

(c) As used in this section:

(1) "Advertise" means to communicate by newspaper, radio, television, handbills, placards or other print, broadcast or electronic medium;

(2) "person" means an individual, firm, partnership, corporation, joint venture or other association or entity; and

(3) "maternity hospital or home" means the same as provided in K.S.A. 65-502 and amendments thereto.

(d) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$5 nor more than \$50. Each and every day that the person fails or refuses to comply shall be deemed a separate offense under the provisions of this section.

§12 Comment

This section is identical to K.S.A. 59-2279, except that the last sentence is new. Once a decree of adoption is entered, genetic parents will not have access to the files except upon order of the court. This new provision is intended to promote integrity and security from intrusion for the adoptive family.

[It appears that subsection (b) added by the Senate Committee is intended to codify current practice of SRS in regard to facilitating communication between genetic parents and adopted children.]

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§13 Comment

This section is identical to K.S.A. 65-509 except that subsection (d) of 65-509 is not retained and the criminal penalty in K.S.A. 65-514 is incorporated. This section is currently part of an act relating to maternity hospitals and boarding homes for children. However, the prohibitions of the section extend beyond such entities and practitioners are often unaware of the section due to its location in chapter 65. Consequently, the committee recommends that the section be relocated with the other adoption provisions.

The committee viewed the current exception for surrogate mother advertisements in subsection (d) of 65-509 as inappropriate for the adoption and relinquishment act and unnecessary in that the prohibitions in the section do not apply to such advertisements.

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New Sec. 14. (a) Any parent or parents or person *in loco parentis* may relinquish a child to an agency, and if the agency accepts the relinquishment in writing, the agency shall stand *in loco parentis* to the child and shall have and possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto.

(b) All relinquishments to an agency under sections 1 through 32 shall be in writing, in substantial conformity with the form for relinquishment contained in the appendix of forms following section 32 and shall be executed by: (1) Both parents of the child; (2) one parent, if the other parent is deceased or the other parent's relinquishment is found unnecessary under section 25; or (3) a person *in loco parentis*.

(c) The relinquishment shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the relinquishment is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the relinquishing person on the record of the consequences of the relinquishment.

(d) Except as otherwise provided, in all cases where a parent or person *in loco parentis* has relinquished a child to the agency pursuant to sections 1 through 32, all the rights of the parent or person *in loco parentis* shall be terminated, including the right to receive notice in a subsequent adoption proceeding involving the child. If a parent has relinquished a child to the agency pursuant to sections 1 through 32, based on a belief that the child's other parent would relinquish the child to the agency, and such other parent does not relinquish such child to the agency, the rights of such parent who has relinquished a child to the agency shall not be terminated.

314 Comment

This section replaces K.S.A. 38-113 and 114 and K.S.A. 38-124 through 128 which presently provide for relinquishments to child-placing agencies and SRS, respectively. See section 2 for definition of "person *in loco parentis*" and sections 5, 6, 7 and 25 for other provisions relating to relinquishments.

Subsection (c) allows a relinquishment to be acknowledged before the court or a person authorized to take acknowledgments. Currently, relinquishments to SRS are required to be acknowledged before the district court and the court has the duty to advise the relinquishing parent of the consequences of the relinquishment. This subsection adds the requirement that this duty be carried out on the record. See section 4 for similar provisions relating to acknowledgment of a consent to adoption.

Subsection (d) addresses termination of parental rights upon relinquishment, including the right to receive notice in a subsequent adoption proceeding. Presently, the statutes explicitly address termination of parental rights only in relinquishments to SRS (38-128). K.S.A. 59-2278(b) was amended in 1987 to state that notice of a subsequent adoption did not have to be given to relinquishing parents or parents whose rights have been terminated.

[The Interim Committee added the last sentence of subsection (d) to the effect that when one parent relinquishes with the belief the other parent will also relinquish, and the other parent does not, the parental rights of the relinquishing parent are not terminated.]

315 Comment

Specific provisions which are applicable only to adoptions of minor children (independent, agency and stepparent adoptions) are set out in sections 16 through 25.

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New Sec. 15. In addition to those requirements, where applicable, as set out in the provisions of sections 1 through 14, sections 16 through 25 shall apply to adoptions of minor children.

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§16 Comment

12 New Sec. 16. (a) In an independent adoption venue shall be in
13 the county in which the petitioner resides or in the county in which
14 the child to be adopted resides.

15 (b) In an agency adoption venue shall be in:

16 (1) In the county in which the petitioner resides or;

17 (2) in the county in which the child to be adopted resided prior
18 to receipt of custody by the agency; or

19 (3) where the child placing agency is located if the child was a
20 resident of Kansas prior to receipt of custody by the agency.

21 (c) In a stepparent adoption venue shall be in the county in
22 which the petitioner resides.

23 (d) If the petitioner resides upon or is stationed at a United
24 States military post or reservation within this state, and the child
25 to be adopted is then residing with the petitioner, venue may be
26 in the district court of the county in which the post or reservation
27 is located, or in the district court of any county located immediately
28 adjacent to such county.

29 (e) Where the residence of the child, as defined in section 2,
30 serves as the basis for venue, a sworn affidavit shall be filed with
31 the petition setting forth the factual basis for the child's residency.

Presently, venue in adoptions is governed by K.S.A. 59-2203. If the petitioner is a Kansas resident, venue is in the county in which the petitioner resides. If the petitioner is a nonresident, venue is in the county in which the child resides, or in an agency adoption, in the county where the agency is located.

Venue provisions implicitly have jurisdictional aspects. It is the position of the advisory committee that, for an adoption proceeding to be appropriate in Kansas, there should be substantial contact with the state either on the part of the petitioner or the child to be adopted. Where the petitioner is a nonresident and the residence of the child serves as the basis for venue and subject matter jurisdiction, the committee has attempted to insure there is an appropriate and sufficient contact with this state. The committee has defined "residence of a child" in section 2 and added subsection (e) of this section which requires a sworn affidavit setting forth the factual basis for the child's residency. This section would require such an affidavit in an agency adoption where the petitioner is a nonresident. The committee did not believe the presence of an agency in the proceedings should obviate the need for contact by either the child or petitioners with Kansas.

Subsection (d) is presently part of 59-2203.

[The Senate Committee added subsection (b)(3) which would allow venue in an agency adoption to be in the county where the child placing agency is located so long as the child was a resident of Kansas prior to receipt of custody by the agency.]

§17 Comment

32 New Sec. 17. (a) A petition for adoption shall be filed by the
33 person desiring to adopt the child, and shall state:

34 (1) In an independent adoption: (A) The name, residence and
35 address of the petitioner;

36 (B) the name of the child, the date, time and place of the child's
37 birth, and the place at which the child resides;

38 (C) the suitability of the petitioner to assume the relationship;

39 (D) whether one or both parents are living and the name, date
40 of birth, residence and address of those living, so far as known to
the petitioner;

41 (E) the facts relied upon as eliminating the necessity for the
42 consent, if the consent of either or both parents is not obtained;

Subsection (a) is largely similar to K.S.A. 59-2277. The requirement to state the time of the child's birth in (a)(1)(B) is added to insure the 24-hour waiting period in section 6 is observed. Subsection (c) of 59-2277 requires a statement of "the facts showing the financial ability of the petitioner to assume the relationship." The committee has substituted in (a)(1)(C) a statement of the petitioner's suitability. The committee viewed financial ability as just one factor in regard to suitability and also omitted the necessity to allege facts showing suitability in the petition since substantiation of suitability will be contain-

1 (F) the information required by the uniform child custody juris-
2 diction act under K.S.A. 38-1309 and amendments thereto; and

3 (G) whether the interstate compact on placement of children,
4 K.S.A. 38-1201 *et seq.* and amendments thereto, and the Indian
5 child welfare act, 25 U.S.C. 1901 *et seq.*, are applicable and have
6 been or will be complied with prior to the hearing;

7 (2) in an agency adoption, all requirements contained in subsec-
8 tion (a)(1) except subsection (a)(1)(E); or

9 (3) in a stepparent adoption, all requirements contained in sub-
10 section (a)(1) except that a statement of compliance with the interstate
11 compact on placement of children is not required.

12 (b) The written consents to adoption required by section 18, the
13 background information required by section 19, the accounting re-
14 quired by section 11 and any affidavit required by section 16 shall
15 be filed with the petition for adoption.

16 New Sec. 18. (a) Consent to an independent adoption shall be
17 given by: (1) The living parents of the child; or

18 (2) one of the parents of the child, if the other's consent is found
19 unnecessary under section 25; or

20 (3) the legal guardian of the child, if both parents are dead or
21 if their consent is found to be unnecessary under section 25; or

22 (4) the court entering an order under subsection (c)(1)(B) of
23 K.S.A. 38-1584 and amendments thereto; and

24 (5) the judge of any court having jurisdiction over the child pur-
25 suant to the code for care of children, if parental rights have not
26 been terminated; and

27 (6) the child sought to be adopted, if over 14 years of age and
28 of sound intellect.

29 (b) Consent to an agency adoption shall be given by: (1) The
30 authorized representative of the agency having authority to consent
31 to the adoption of the child; and

32 (2) the child sought to be adopted, if over 14 years of age and
33 of sound intellect.

34 (c) The provisions of subsection (a) shall apply to consent in a
35 stepparent adoption, except that subsections (a)(3) and (4) shall not
36 apply.

37 (d) A consent given by a parent or legal guardian shall be in
38 substantial conformity with the form for consent contained in the
39 appendix of forms following section 32.

40 (e) A consent given by a legal guardian, judge or agency shall
41 set forth the authority to execute the consent and shall be accom-
42 panied by documents supporting that authority.

43 New Sec. 19. (a) The following information shall be filed with

ed in the assessment required by section 21. The committee has
also required in (a)(1)(G) a reference to the interstate compact
on placement of children and the Indian child welfare act to
alert parties to the potential relevance of these acts.

Except for any affidavit which may be required under section
16, the requirements contained in proposed subsection (b) are
currently located in K.S.A. 59-2278(a) and 59-2287c(b).

§ 18 Comment

This section replaces K.S.A. 59-2102(a). 59-2102(a)(3)
requires consent by "one of the parents if the other has failed
or refused to assume the duties of a parent for two consecutive
years or is incapable of giving consent; . . ." This alternative
is merged into (a)(2) of the proposal by making failure to assume
parental duties for two years a ground for eliminating the
necessity of a parent's consent under section 25.

Subsection (a)(4) is new and recognizes the authority of a
court to consent to an adoption under K.S.A. 38-1584(c)(1)(B).

Subsection (a)(5) is similar to 59-2102(a)(6), except that a
reference to the Code for Care of Children has been inserted in
lieu of the phrase "ward of the court".

Subsections (d) and (e) are new. Presently, there are no
prescribed forms. The forms contained in the proposal are
intended to give guidance to practitioners and to incorporate new
provisions relating to such matters as the 24-hour waiting
period, attorneys for minors and the duty of the court in
acknowledgment of consents.

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2 the petition in an independent or agency adoption: (1) A complete
3 written genetic, medical and social history of the child and the
4 parents;

5 (2) the names, dates of birth, addresses, telephone numbers, and
6 social security numbers of each of the child's parents, if known;

7 (3) any hospital records pertaining to the child or a properly
8 executed authorization for release of those records; and

9 (4) the child's birth verification, which shall include the date,
10 time and place of birth and the name of the attending physician.

11 (b) The genetic, medical and social history required by this sec-
12 tion shall be in conformity with the rules and regulations adopted
13 by the secretary of social and rehabilitation services and on forms
14 provided by the secretary.

15 (c) If any information required to be filed under this section is
16 not available, an affidavit explaining the reasons why it is not available
17 shall be filed with the petition for adoption.

18 (d) The secretary of social and rehabilitation services shall adopt
19 rules and regulations establishing procedures for updating a child's
20 genetic, medical and social history if new information becomes known
21 at a later date. The agency or person conducting the investigation
22 under section 21 shall advise in writing each of the child's biological
23 parents, if known, of those procedures.

24 (e) Any employee or agent of the department of social and re-
25 habilitation services, a child-placing agency or a district court who
26 intentionally destroys any information required to be filed under this
27 section is guilty of a class C misdemeanor.

28 New Sec. 20. Pending the hearing in an independent or agency
29 adoption, the court may make an appropriate order for the care and
30 custody of the child. If the court makes an order for placement in
31 a home not licensed to provide such care, then the home shall first
32 be assessed by a person or agency authorized to make assessments
33 under subsection (a) or (f) of section 21. In the absence of a pre-
34 placement assessment, the court may make an order for placement
35 in a home not licensed to provide for the care and custody of the
36 child following an evidentiary hearing which shall include testimony
37 by the petitioners. Such hearing shall be heard and determined by
38 the court as expeditiously as possible.

39 New Sec. 21. (a) In independent and agency adoptions, the court
40 shall require the petitioner to obtain an assessment by a court ap-
41 proved social worker licensed to practice social work in Kansas or
42 by a licensed child-placing agency of the advisability of the adoption.

43 (b) The petitioner shall file with the court, not less than 10 days
before the hearing on the petition, a report of the assessment and,

This section replaces K.S.A. 59-2278a relating to background information on the adoptee. It continues the policy of requiring such information only in independent and agency adoptions.

Subsection (a) is virtually identical to the present statute.

Subsection (b) of the proposal is an abbreviated form of 59-2278a(b). The specific information required by the present subsection is covered by SRS's forms.

Subsection (c) is similar to 59-2278a(f), but recognizes a consenting party may not be available to sign the affidavit.

Subsection (d) of the proposal is virtually identical to subsection (c) of the present statute.

Subsection (e) of the proposal is identical to subsection (e) of the present statute.

320 Comment

Under 59-2278(b), the court has the authority to make appropriate orders for the care and custody of the child pending the hearing on the petition. The proposal would require a preplacement assessment before a temporary custody order could be issued. Exceptions are allowed, but only if the petitioners appear and testify as to the need for an exception.

However, in interstate adoptions, it is a violation of the interstate compact to cross a state line with the child without first obtaining approval from the receiving state. Normally that approval is based on a preplacement assessment.

[The last sentence was added by the Interim Committee.]

321 Comment

Section 21 addresses the assessment of the advisability of the adoption and generally follows the present requirements of subsections (c), (d) and (e) of K.S.A. 1988 Supp. 59-2278. The section continues the present policy of not requiring an assessment in stepparent adoptions.

1 if necessary, confirmation or clarification of the information filed
2 under section 19.

3 (c) If there is no licensed social worker or licensed child-placing
4 agency available to make the assessment and report to the court,
5 the court may use the department of social and rehabilitation services
6 for that purpose.

7 (d) The costs of making the assessment and report may be as-
8 sessed as court costs in the case as provided in article 20 of chapter
9 60 of the Kansas Statutes Annotated and amendments thereto.

10 (e) In making the assessment, the social worker, child-placing
11 agency or department of social and rehabilitation services is au-
12 thorized to observe the child in the petitioner's home, verify financial
13 information of the petitioner, shall clear the name of the petitioner
14 with the child abuse and neglect registry through the department
15 of social and rehabilitation services and to contact the agency or
16 individuals consenting to the adoption and confirm and, if necessary,
17 clarify any genetic and medical history filed with the petition. This
18 information shall be made a part of the report to the court. The
19 report to the court by the social worker, child-placing agency or
20 department of social and rehabilitation services shall include the
21 results of the investigation of the petitioner, the petitioner's home
22 and the ability of the petitioner to care for the child.

23 (f) In the case of a nonresident who is filing a petition to adopt
24 a child in Kansas, the assessment and report required by this section
25 must be completed in the petitioner's state of residence by a licensed
26 social worker, a licensed child-placing agency or a comparable entity
27 in that state and filed with the court not less than 10 days before
28 the hearing on the petition.

29 (g) The assessment and report required by this section must have
30 been completed not more than one year prior to the filing of the
31 petition for adoption.

Subsections (b), (c), (d), (f) and (g) are identical to current provisions.

Subsection (a) substitutes "court approved" social worker for the current "court designated" social worker. This change is proposed to avoid the appearance that the court is directing work to particular social workers. It also recognizes that many assessments can be completed, in whole or in part, prior to the time the petition is filed and before the court would have an opportunity to "designate" a social worker.

In subsection (e), it is explicitly stated that the child is to be observed "in the petitioner's home". The proposal also gives the person making the assessment authority to verify financial information on the petitioner and to check the petitioner's name against the child abuse and neglect registry maintained by SRS.

In a number of independent adoptions, much of the assessment can be completed prior to filing of the petition. However, observation of the child in the petitioner's home generally won't occur until the petition has been filed and temporary custody given to the petitioners following a preplacement assessment as required by section 20. The preplacement assessment could then be supplemented to provide the completed assessment and report required to be filed 10 days before the hearing on the petition.

Typically in agency adoptions, the agency will have temporarily placed the child with the petitioners. Consequently, the entirety of the assessment and report, including observation of the child in the petitioners' home, will have been completed by the time the petition is filed.

In the case of nonresident petitioners, it should be noted the interstate compact on placement of children requires approval of the receiving state (generally based on a preplacement assessment) before the child can be placed in the petitioners' home. Subsequent to such preplacement assessment and placement, observation of the child in the petitioners' home will have to be made by the person authorized under subsection (f) and the assessment and report completed and filed 10 days prior to the hearing on the petition.

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§ 22 Comment

Section 22 replaces provisions currently found in subsections (a) and (b) of K.S.A. 1988 Supp. 59-2278. Subsection (a) of the proposal eliminates the current possibility of a hearing in less than 30 days where (1) notice is waived by each living parent, (2) an assessment of the advisability of the adoption is not required and (3) there are no interested parties other than the petitioner and the consenting parties.

In independent and stepparent adoptions, subsection (b) requires notice to natural parents unless parental rights have been terminated. Any challenges to the free and voluntary nature of a consent should be raised and resolved at the hearing. The committee noted the questionable effectiveness of a waiver of notice included in a consent which is later attacked as not being free and voluntary.

Subsection (c) continues the policy currently found in 59-2278(b) of not giving notice to parents who have voluntarily relinquished their child.

§ 23 Comment

Section 23 replaces section (f) of K.S.A. 1988 Supp. 59-2278. Subsection (a) has the same import as the present provision.

Subsection (b) is new. The second sentence recognizes the possibility in an independent adoption that, if the adoption is denied, no person may be available to take custody of the child. If an appropriate resolution cannot be achieved within the 30 days, it will be necessary to institute proceedings under the code for care of children.

Subsection (c) allows the court to assess costs other than to the petitioner. The committee noted the possibility of appointing an attorney for an unknown or unlocated father under section 25 and a subsequent appearance by such father. If financially able, the committee saw no reason the costs of such attorney should not be assessed to the father.

32 New Sec. 22. (a) Upon filing the petition, the court shall fix the
33 time and place for the hearing. The time fixed for the hearing may
34 be any time not less than 30 days nor more than 60 days from the
35 date the petition is filed. The time fixed for the hearing may be
36 extended by the court for good cause.

37 (b) In independent and stepparent adoptions notice of the hearing
38 on the petition shall be given to the parents or presumed parents,
39 unless parental rights have been previously terminated, and any
40 other persons as the court may direct. Notice also shall be given in
41 an independent adoption to a legal guardian of the child or individual
42 in loco parentis.

43 (c) In an agency adoption notice of the hearing on the petition
1 shall be given to the consenting agency unless waived.

2 (d) Notice given pursuant to this section shall not include a copy
3 of the petition.

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4 New Sec. 23. (a) Upon the hearing of the petition, the court
5 shall consider the assessment and all evidence offered by any in-
6 terested party. If the adoption is granted, the court shall make a
7 final decree of adoption.

8 (b) If the adoption is denied, the court shall enter appropriate
9 orders. Such orders may include an order giving temporary custody
10 of the child to another person or agency for a period not to exceed
11 30 days pending termination of the instant case or a new case being
12 filed.

13 (c) The costs of the adoption proceedings shall be paid by the
14 petitioner or as assessed by the court.

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New Sec. 24. The clerk of each district court shall provide a copy of the decree of adoption, a copy of the report of adoption required in section 9 and a copy of the information required in section 19 pertaining to any adoption of a minor to the secretary of social and rehabilitation services. All information pertaining to adoptions of minors required to be provided to the secretary of social and rehabilitation services shall be maintained by the secretary and shall be subject to disclosure to the same extent as files and records of the court under section 12.

§ 24 Comment

Section 24 essentially replaces K.S.A. 1988 Supp. 59-2278(g) and 59-2278a(d). Present provisions require that SRS be provided a copy of the social assessment. Rather than requiring the court to reproduce these often lengthy assessments, the committee has substituted the requirement that SRS be provided with a copy of the report of adoption made under section 9. If further information is necessary, SRS has access to court files and records under section 12. The proposal would make information submitted to SRS subject to disclosure to the same extent as court records and files under section 12.

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New Sec. 25. (a) The provisions of this section shall apply where a relinquishment or consent to an adoption has not been obtained from a parent and sections 14 and 18 state that the necessity of a parent's relinquishment or consent can be determined under this section.

(b) Insofar as practicable, the provisions of this section applicable to the father also shall apply to the mother.

(c) The court shall appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. If no person is identified as the father or a possible father, the court shall order publication notice of the hearing in such manner as the court deems appropriate.

(d) In a stepparent adoption, if a mother consents to the adoption of a child who (1) has a presumed father under subsection (a)(1), (2) or (3) of K.S.A. 38-1114 and amendments thereto, or (2) has a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years, or is incapable of giving such consent. In determining whether

§ 25 Comment

Section 25 contains procedures to determine the necessity for obtaining a parent's consent or relinquishment and to terminate parental rights where appropriate. It replaces K.S.A. 1988 Supp. 38-1129 which is currently part of the parentage act. Since the section only has application in relation to relinquishments and consents to adoption, it was deemed more appropriate to relocate the section in this act.

Subsection (a) is intended to give a clearer statement of the section's application.

Generally, proceedings under this section will be directed towards the rights of the father. To avoid awkward and confusing language, the section speaks in such terms. Subsection (b) is identical to the current provision in K.S.A. 38-1126 of the parentage act and recognizes that, on occasion, it will be the rights of the mother which are at issue.

The first sentence of subsection (c) is the same as present 38-1129(f). The second sentence is similar to a provision in subsection (e) of the present statute, but has been relocated to this subsection since it will have application only where the father is unknown.

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a father's consent is required under this subsection, the court may disregard incidental visitations, contacts, communications or contributions.

(e) Except as provided in subsection (d), if a mother desires to relinquish or consents to the adoption of such mother's child, a petition shall be filed in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court. The petition may be filed by the mother, the petitioner for adoption, the person or agency having custody of the child or the agency to which the child has been or is to be relinquished. Where appropriate, the request to terminate parental rights may be contained in a petition for adoption. In an effort to identify the father, the court shall determine by deposition, affidavit or hearing, the following: (1) Whether there is a presumed father under K.S.A. 38-1114 and amendments thereto;

(2) whether there is a father whose relationship to the child has been determined by a court;

(3) whether there is a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction;

(4) whether the mother was cohabitating with a man at the time of conception or birth of the child;

(5) whether the mother has received support payments or promises of support with respect to the child or in connection with such mother's pregnancy; and

(6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

If the father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (f).

(f) Notice of the proceeding shall be given to every person identified as the father or a possible father by personal service, registered mail or in any other manner the court may direct. Proof of notice shall be filed with the court before the petition or request is heard.

(g) If, after the inquiry, the court is unable to identify the father or any possible father and no person has appeared claiming to be the father and claiming custodial rights, the court shall enter an order terminating the unknown father's parental rights with reference to the child without regard to subsection (h). If any person identified as the father or possible father of the child fails to appear or, if appearing, fails to claim custodial rights, such person's parental rights with reference to the child shall be terminated without regard to

Generally speaking, proceedings under 38-1129 are currently not available if the child has a presumed father under the parentage act, a father whose paternity has been determined or a father as to whom the child is a legitimate child under prior law. In other words, a relinquishment or consent to adoption must be obtained from such a father, unless his rights have been terminated or his consent is unnecessary under 59-2102(a)(3) for failure to assume parental duties for two years. This would be changed by section 25. Under this section, the necessity for any father's consent or relinquishment can be determined and parental rights terminated if appropriate grounds are established.

Subsection (d) limits the grounds for termination of certain natural fathers' parental rights in connection with stepparent adoptions. Generally, if the child was the product of a marriage or attempted marriage, the consent of the father must be obtained unless there was a failure to assume parental duties for two years. The committee justifies this differing treatment of certain fathers in stepparent adoptions on the basis there is not the urgency to create a new family for the child since the child is residing with the mother and stepfather.

Subsection (e) is essentially the same as present procedures. It does indicate that, where appropriate, proceedings under this section can be requested in the petition for adoption. Also, (1) (2) and (3) have been added since such fathers are now subject to this type of proceeding.

Subsection (f) replaces 38-1129(e) which provides for service ". . . in any manner the court directs." The manner of service must be reasonably calculated to give the father notice of the proceedings.

Subsection (g) contains provisions currently found in subsections (d) and (e) of 38-1129 and clarifies that a finding under (h) is not required in such situations.

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1 subsection (h).

2 (h) When a father or alleged father appears and asserts parental
3 rights, the court shall determine parentage, if necessary pursuant to
4 the Kansas parentage act. If a father desires but is financially unable
5 to employ an attorney, the court shall appoint an attorney for the
6 father. Thereafter, the court may order that parental rights be ter-
7 minated, upon a finding by clear and convincing evidence, of any
8 of the following: (1) The father abandoned or neglected the child
9 after having knowledge of the child's birth;

10 (2) the father is unfit as a parent or incapable of giving consent;

11 (3) the father has made no reasonable efforts to support or com-
12 municate with the child after having knowledge of the child's birth;

13 (4) the father, after having knowledge of the pregnancy, failed
14 without reasonable cause to provide support for the mother during
15 the six months prior to the child's birth;

16 (5) the father abandoned the mother after having knowledge of
17 the pregnancy;

18 (6) the birth of the child was the result of rape of the mother;
19 or

20 (7) the father has failed or refused to assume the duties of a
21 parent for two consecutive years preceding the filing of the petition.
22 The court may disregard incidental visitations, contacts, communi-
23 cations or contributions.

24 New Sec. 26. In addition to those requirements, where appli-
25 cable, as set out in the provisions of sections 1 through 14, sections
26 27 through 31 shall apply to adult adoptions.

27 New Sec. 27. Venue shall be in the county in which the peti-
28 tioner or the adult to be adopted resides.

29 New Sec. 28. (a) A petition for adult adoption shall be filed by
30 the person desiring to adopt the adult and shall state: (1) The name,
31 residence and address of the petitioner;

32 (2) the name, residence, address and date of birth of the adult
33 to be adopted;

34 (3) whether the petitioner or adult to be adopted is married and
35 if so, the name, residence and address of the spouse;

36 (4) the facts showing the reasons for the adoption;

37 (5) whether one or both of the parents of the adult to be adopted
38 are living and the name, residence and address of those living so
39 far as known to the petitioner or the adult to be adopted; and

40 (6) whether or not any change of name is requested.

41 (b) The written consents required by section 29 and the ac-
42 counting required by section 11 shall be filed with the petition for
43 adoption.

Subsection (h) contains a new provision for appointment of
an attorney for an indigent father who appears and asserts
parental rights. The grounds are the same as those contained in
38-1129(d) with two exceptions. In (h)(4), "after having
knowledge of the pregnancy" has been added. Apparently, at one
time this ground was used to terminate unidentified or unlocat-
able fathers and a requirement of showing the father had know-
ledge of the pregnancy would have rendered this ground useless
for such purpose. However, such fathers are adequately addressed
by (g) of the proposal. The proposal also adds (h)(7). This
provision is currently located in K.S.A. 1988 Supp. 59-2102(a)(3)
relating to consent to adoption.

§ 26 Comment

Specific provisions which are applicable only to adult
adoptions are set out in sections 27 through 31.

The present statutes seldom specifically address adult
adoptions. (See K.S.A. 59-2101 and 59-2280) Since the
considerations relevant to adoptions of minor children and adult
adoptions differ in many respects, the committee deemed it
appropriate to establish certain specific procedures for adult
adoptions.

New Sec. 29. Before any adult is adopted consent to the adoption shall be given by: (a) The adult subject of the adoption or the legal guardian of a disabled adult subject of adoption; and

(b) the spouse of the petitioner or the spouse's legal guardian if a disabled person.

New Sec. 30. (a) The court, by order, shall fix a time and place for hearing on the petition. The hearing may be with or without notice as the court shall direct and the court may hear the petition forthwith.

(b) The court may order that notice of the hearing be given to the parents of the adult subject of the adoption and shall require notice, unless waived, to any consenting party.

New Sec. 31. The petitioner or attorney for the petitioner, if a decree of adoption is entered, shall mail a certified copy of the decree to the former parent of the adult adoptee, if the parent has had no notice of the proceeding and, with reasonable diligence, can be located for service by first-class mail. The petitioner or the attorney shall file proof of mailing with the court or shall file an affidavit setting forth the reasons for noncompliance if the reasons are not evident from the verified pleadings on file. Failure to give the notice required by this section shall not invalidate the adoption.

New Sec. 32. The forms contained in the appendix of forms are sufficient under sections 1 through 32.

APPENDIX OF FORMS

RELINQUISHMENT OF MINOR CHILD TO AGENCY

NOTICE TO PARENT OR PERSON *IN LOCO PARENTIS*:

This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein. You are to receive a copy of this document.

I, _____, (mother, father, person *in loco parentis*) of _____, a minor child, state:

The child was born on _____ at (place of birth) at _____ m.

I reside at _____, County of _____ and State of _____

(If the relinquishment is by a person *in loco parentis* the relinquishment shall have attached documents supporting the person's authority to execute the relinquishment.)

I am of the age of _____ years and was born on _____

(If the relinquishing person is a minor, the relinquishment should set forth that,

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§ 31 Comment

As an adult may still be subject to a valid child support order and due to the consequences under Kansas Statutes relating to intestate succession or a previously executed last will and testament, it was determined that notice of the completed adoption should be given to former parents whose rights had been affected.

1 prior to signing the relinquishment, the person has received legal advice as to the
2 relinquishment, from an attorney who does not represent the agency.)

3 I do hereby relinquish the child to (name of agency), which I understand will have
4 full power and all the rights of a birth parent or legal guardian over the child,
5 including the power to place the child for adoption and give consent thereto.

6 I wish to and understand that by signing this relinquishment I do permanently
7 give up all custody and other parental rights I have to such child, including the right
8 to receive notice of any subsequent adoption proceedings involving the child.

9 I have read and understand the above and I am signing it as my free and voluntary
10 act.

11 Dated this _____, at _____ .m.

12 _____
13 (Parent or Person in loco parentis)

14 Certificate of Attorney for Relinquishing Minor Parent

15 I have fully explained that by signing this relinquishment _____
16 is permanently giving up all parental rights to the child and (she) (he) has stated that
17 such is (her) (his) intention and desire.

18 Dated _____
19 _____

20 (Attorney)

21 ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

22 STATE OF _____)
23) SS:
24 COUNTY OF _____)

25 I, _____, Judge
26 of _____ (name and location of court),
27 certify that _____, known to me
28 to be the same person whose name is subscribed to the foregoing relinquishment,
29 appeared before me this day in person and acknowledged that (she) (he) signed for
30 such relinquishment as (her) (his) free and voluntary act, for the specified purpose.

31 I have fully explained that by signing such relinquishment (she) (he) is permanently
32 giving up all parental rights to such child and (she) (he) has stated that such is (her)
33 (his) intention and desire.

34 Dated _____, at _____ .m.

35 _____
36 JUDGE

37 ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

38 STATE OF _____)
39) SS:
40 COUNTY OF _____)

41 I, a notarial officer in and for the county and state aforesaid, certify that, known (to me
42 to me
43 to be the same person whose name is subscribed to the foregoing relinquishment,

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appeared before me in person and acknowledged that the statements made in the foregoing relinquishment are true.

Dated _____, at _____, m.

(Signature of Notarial Officer)

(SEAL, if any)

Title (and Rank)

My Appointment Expires: _____

ACCEPTANCE OF CHILD BY AGENCY:

I, the undersigned, on behalf of _____ (name of agency) do hereby accept custody of _____, the above relinquished minor child.

(Date)

(Name and Title)

CONSENT TO ADOPTION OF MINOR CHILD

NOTICE TO PARENT OR LEGAL GUARDIAN:

This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein, so as to permit the child's adoption. You are to receive a copy of this document.

I, _____, (mother, father, legal guardian) of _____, a minor child, state:

The child was born on _____ at _____ (place of birth) at _____, m.

I reside at _____, County of _____ and State of _____.

(If the consent is by a legal guardian, the consent shall have attached documents supporting the guardian's appointment and the authority of the guardian to execute the consent.)

I am of the age of _____ years and was born on _____.

(If the consenting person is a minor, the consent should set forth that, prior to signing the consent, the person has received legal advice as to the consent, from an attorney who does not represent the petitioner for adoption.)

I do hereby consent and agree to the adoption of the child [(by _____) or (and I do not require disclosure of the name or other identification of the adopting parent or parents)].

I wish to and understand that by signing this consent I do permanently give up all custody and other parental rights I have to such child.

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I have read and understand the above and I am signing it as my free and voluntary act.

Dated this _____, at _____ m.

(Parent or Legal Guardian)

Certificate of Attorney for Consenting Minor Parent

I have fully explained that by signing this consent _____ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated _____

Attorney

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

STATE OF _____)

) SS:

COUNTY OF _____)

I, _____, Judge of _____ (name and location of court), certify that _____ known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me this day in person and acknowledged that (she) (he) signed such consent as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that by signing such consent (she) (he) is permanently giving up all parental rights to such child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated _____, at _____ m.

JUDGE

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF _____)

) SS:

COUNTY OF _____)

I, a notarial officer in and for the county and state aforesaid, certify that _____, known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.

Dated _____, at _____ m.

(Signature of Notarial Officer)

(SEAL, if any)

Title (and Rank)

[My Appointment Expires: _____]

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AGENCY CONSENT TO ADOPTION OF MINOR CHILD

(Name of Agency), a (public) (private) entity having for its purpose the care and maintenance of children, is located in and authorized under the laws of the state of to place children for adoption, consent to the adoption and to stand in loco parentis to such children until they are adopted or reach majority.

(Name of Agency) is vested with the right to consent to the adoption of (Name of Child), a minor child born (Date of Birth) at (Place of Birth) pursuant to [a relinquishment executed by (the parents of the child)(the person in loco parentis to the child) an order or judgment of the _____ court of _____ county, _____, a court of competent jurisdiction]. Documents supporting the authority to execute this consent are attached hereto.

(Name of Agency) does hereby consent to the adoption of (Name of Child) by _____ resident(s) of _____ and does hereby surrender said child to said person(s) for the purpose of adoption.

(Name of Agency) has authorized (Name of Authorized Representative) the undersigned, as the authorized representative to execute consents to adoption on behalf of said agency.

[The agency consent form was added by the Senate Committee at the request of the Family Law Committee.]

(Date) (Name and Title of Authorized Representative)

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF _____)

) SS:

COUNTY OF _____)

I, a notarial officer in and for the county and state aforesaid certify that _____, known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.

Dated _____, at _____ m.

(Signature of Notarial Officer)

(SEAL, if any)

Title (and Rank)

[My Appointment Expires: _____]

Sec. 33. K.S.A. 38-1206 is hereby amended to read as follows: 38-1206. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. Failure to comply with the provisions of the interstate compact on the placement of children by

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any professional providing services related to the placement of children is a class C misdemeanor. For the purposes of this section, "professional" means any person who receives payment or compensation for providing services related to the placement of children for adoption.

Sec. 34. K.S.A. 40-2,102 is hereby amended to read as follows: 40-2,102. All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a profit or nonprofit corporation which provides coverage for a family member of the insured or subscriber shall, as to such family members' coverage, also provide that the health insurance benefits applicable for children shall be payable from the moment of birth with respect to a newly born child of or a child adopted within 90 days of birth of such child by the insured or subscriber from the moment of birth. Such benefits shall include delivery expenses at birth of the birth mother of a child adopted within 90 days of birth of such child by the insured or subscriber subject to the same limitations contained in such policy or contract applicable to the insured or subscriber. Such benefits shall also be payable from at least the date of placement with respect to any other child who has been placed for adoption with the insured and for whom the application and consent procedures have been completed pursuant to applicable state or federal law.

*Ins
Benefits
referred*

[Section 34 was added by the Interim Committee.]

The coverage for newly born or adopted children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born or adopted child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within ~~thirty-one~~ (31) 31 days after the date of birth in order to have the coverage continue beyond such ~~thirty-one~~ 31 day period.

Sec. 35. K.S.A. 59-2203 is hereby amended to read as follows: 59-2203. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his or her death; of such decedent. If the decedent was not a resident of this state, proceedings may be had in any county wherein said where such decedent left any estate to be administered as provided in K.S.A. 59-805 and amendments thereto. Proceedings for the appointment of a guardian may be had in the county of the

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 2 proposed ward's residence or where the proposed ward may be
 3 found. Proceedings for the appointment of a conservator shall be
 4 had in the county of the proposed conservatee's residence; if the
 5 proposed conservatee resides without this state, proceedings may be
 6 had in any county in which any of the proposed conservatee's prop-
 7 erty is situated. Proceedings for the administration of a partnership
 8 estate by the surviving partner shall be had in the county of the
 9 residence of the deceased partner at the time. If the deceased partner
 10 is a nonresident of the state the proceedings may be had in any
 11 county in which any of the partnership property is situated. Such
 12 proceedings first legally commenced shall extend to all of the prop-
 13 erty of the decedent or proposed conservatee in this state.

14 If the proceedings are instituted in more than one county, they
 15 shall be stayed except in the county where first commenced until
 16 final determination of venue. If the proper venue is determined to
 17 be in another county, the district court, after making and retaining
 18 a true copy of the entire file, shall transmit the original to the proper
 19 county. Proceedings by a person seeking to adopt a child shall
 20 be had in the county of the residence of such person if such
 21 person is a resident of the state. If such person is a nonresident
 22 of the state such proceedings shall be had in the county in
 23 which the child to be adopted resides, except that if the child
 24 is in the custody of an institution or agency authorized by the
 25 laws of this state to place children for adoption such proceed-
 26 ings shall be had in the county in which such institution or
 27 agency is located. If such person resides upon or is stationed
 28 at a United States military post or reservation within this state,
 29 and the child to be adopted is then residing with such person,
 30 adoption proceedings may be had in the district court of the
 31 county in which such post or reservation is located, or in the
 32 district court of any county located immediately adjacent to
 33 such county.

34 Sec. 36. K.S.A. 1989 Supp. 65-504 is hereby amended to read
 35 as follows: 65-504. (a) The secretary of health and environment shall
 36 have the power to grant a license to a person, firm, corporation or
 37 association to maintain a maternity hospital or home, or a boarding
 38 home for children under 16 years of age. The license shall state the
 39 name of the licensee, describe the particular premises in or at which
 40 the business shall be carried on, whether it shall receive and care
 41 for women or children, and the number of women or children that
 42 may be treated, maintained, boarded or cared for at any one time.
 43 No greater number of women or children than is authorized in the
 license shall be kept in those premises and the business shall not

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1 be carried on in a building or place not designated in the license.
2 The license shall be kept posted in a conspicuous place in the hospital
3 or house in which the business is conducted. No license shall be
4 granted for a term exceeding one year. The secretary of health and
5 environment shall grant no license in any case until careful inspection
6 of the maternity hospital or home, or home for children shall have
7 been made according to the terms of this act and until such maternity
8 hospital or home, or home for children has complied with all the
9 requirements of this act. No license shall be granted without the
10 approval of the secretary of social and rehabilitation services, except
11 that the secretary of health and environment may issue, without the
12 approval of the secretary of social and rehabilitation services, a tem-
13 porary permit to operate for a period not to exceed 90 days upon
14 receipt of an initial application for license.

15 (b) In all cases where the secretary of social and rehabilitation
16 services deems it necessary, an investigation of the home shall be
17 made under the supervision of the secretary of social and rehabili-
18 tation services or other designated qualified agents. For that purpose
19 and for any subsequent investigations they shall have the right of
20 entry and access to the premises of the home and to any information
21 deemed necessary to the completion of the investigation. In all cases
22 where an investigation is made, a report of the investigation of such
23 home shall be filed with the secretary of health and environment.
24 In cases where neither approval or disapproval can be given within
25 a period of 30 days following formal request for such a study, the
26 secretary of health and environment may issue a temporary license
27 without fee pending final approval or disapproval of the home or
28 facility.

29 (c) Whenever the secretary of health and environment refuses to
30 grant a license to an applicant, the secretary shall issue an order to
31 that effect stating the reasons for such denial and within five days
32 after the issuance of such order shall notify the applicant of the
33 refusal. Upon application not more than 15 days after the date of
34 its issuance a hearing on the order shall be held in accordance with
35 the provisions of the Kansas administrative procedure act.

36 (d) When the secretary of health and environment finds upon
37 investigation or is advised by the secretary of social and rehabilitation
38 services that any of the provisions of this act *or the provisions of*
39 *section 13* are being violated, or such maternity hospital or home,
40 or home for children is maintained without due regard to the health,
41 comfort or morality of the residents, the secretary of health and
42 environment, after giving notice and conducting a hearing in ac-
43 cordance with the provisions of the Kansas administrative procedure

act, shall issue an order revoking such license and such order shall clearly state the reason for such revocation.

(e) If the secretary revokes or refuses to renew a license, the licensee who had a license revoked or not renewed shall not be eligible to apply for a license or for a certificate of registration to maintain a family day care home under K.S.A. 65-518 and amendments thereto for a period of one year subsequent to the date such revocation or refusal to renew becomes final.

(f) Any applicant or licensee aggrieved by a final order of the secretary of health and environment denying or revoking a license under this act may appeal the order in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 37. K.S.A. 38-113, 38-114, 38-124, 38-125, 38-126, 38-127, 38-128, 38-1206, 40-2,102, 59-2101, 59-2103, 59-2104, 59-2203, 59-2277, 59-2279, 59-2280 and 65-509 and K.S.A. 1989 Supp. 38-1129, 59-2102, 59-2278, 59-2278a, 59-2278b, 59-2278c and 65-504 are hereby repealed.

Sec. 38. This act shall take effect and be in force from and after its publication in the statute book.

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H. Judd Comm.
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STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding S.B. 431

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear before you today and to address adoption related issues.

The Department of Social and Rehabilitation Services supports Senate Bill 431 and believes it addresses a number of badly needed reforms in the area of adoption.

This bill introduces a number of new initiatives which serve to protect all those involved in the adoption process, i.e., the child, the birth parents, and the adoptive family; while at the same time better regulating independent adoptions.

Passage of the bill will be a major step in assuring that children are placed in appropriate adoptive families and are better protected; that the rights of relinquishing and consenting parents are addressed; and that adoptive parents have knowledge of the child's background, genetic and health history. The possibility of an adoption being set aside when these procedures are followed is minimal.

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We wish to reiterate our support of this bill, believing that over-all it contributes significantly to the protection of children in adoptive placements and represents good child welfare practices, while also honoring the rights and best interests of the adult parties involved.

Winston Barton
Secretary
Department of Social &
Rehabilitation Services
(913) 296-3271

3/28/90
H. Jud Com.

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