

Approved February 21, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Richard Rock at

10:00 a.m./~~p.m.~~ on February 5, 1990 in room 514-S of the Capitol.

All members were present except: Senators Yost and Moran who were excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Matthew Lynch, Judicial Council Staff
Judge David P. Mikesic, Wyandotte County District Court
Jill Bremyer-Archer, McPherson
Ganis LaRee Pine, Lawrence LMSW
Susan R. Lovett, American Adoption Congress
Daniel T. Brooks, Lutheran Social Services

Senator Rock called the meeting to order by recognizing Ron Smith, Kansas Bar Association. Mr. Smith presented a request for introduction of a bill concerning crime victims restitution. (ATTACHMENT I)

Senator Morris moved to introduce a bill as requested by Ron Smith, Senator Petty seconded the motion. The motion carried.

Chairman Winter opened the hearing for SB 431.

SB 431 - concerning adoption; enacting the Kansas adoption and relinquishment act; providing that certain health policies and contracts contain coverage with respect to adopted children.

Matthew Lynch, staff person for the Judicial Council, outlined the background of the adoption study undertaken by the Family Law Committee and presented SB 431. He stated that the Committee would like to submit an "AGENCY CONSENT TO ADOPTION OF MINOR CHILD" form to be amended into the bill. (ATTACHMENT II) Mr. Lynch said he would get a balloon to the committee with the suggested amendments and that Judge Bruner, Chairman of the Family Law Committee that undertook the original study could make himself available at a later date for questioning from the committee.

Judge David P. Mikesic, Wyandotte County District Court, testified in support of SB 431 with suggested amendments. (ATTACHMENT III)

Jill Bremyer-Archer, McPherson, testified in support of SB 431 with suggested amendments. (ATTACHMENTS IV & V)

Ganis LaRee Pine, Lawrence LMSW, testified in support of SB 431. She added that she supported Judge Mikesic's suggested 72-hour "cooling-off" period. (ATTACHMENT VI)

Susan R. Lovett, American Adoption Congress, testified essentially in support of SB 431, but with strong exception. (ATTACHMENT VII)

Daniel T. Brooks, Lutheran Social Services, testified in support of the concept of SB 431 but feels the expansion of the rights of the "unwed" father is frightening. (ATTACHMENT VIII)

Rochelle Harris, Wichita Adult Adoptees, presented written testimony opposed "to excluding birth parents access to the adoption file of the adult adoptee." (ATTACHMENT IX)

Sharon A. Peters, Wichita, presented written testimony opposing SB 431. (ATTACHMENT X)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 5, 1990.

Written testimony from Douglas J. Keeling, Wichita attorney, supporting SB 431 with exceptions, was presented to the committee. (ATTACHMENT XI)

Due to time constraints, the hearing was continued to Tuesday, February 6 at 10:00 a.m. in Room 514-S.

The meeting was adjourned.

(1)

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
BOB PARNUM	TOPEKA	SRS YOUTH SVC
M. L. Lovett	Hutchinson, Ks	GENETIC PARENT
Susan Lawrence	Hutchinson	American Adoptions Corp
Rochelle Harris	Wichita, Ks	Wichita adult adopters
Sharon A. Peters	Wichita, Ks	Adult Adopter
PERE BOURDESS	KCK	SHAWNEE MISSION CHRISTIAN SCHOOL
Amanda S. Coleman	KCK	shawnee Mission Christian School
Pamela Eddy	"	"
Rebecca Ward	KCK	shawnee Mission Christian school
Amber J. Colbourne	Kansas City, Kansas	Shawnee Mission Christian school
Angie Carber	KCK	Shawnee Mission Christian School
Mary Beth Morris	KCK	Shawnee Mission Christian School
Andrea Lee Burton	KCK	SHAWNEE MISSION Christian School
KETH R. LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Melissa Ness	Topeka	Ks. Children's Service League
Bambaw Stodger	Topeka	Ks SRS YOUTH Services
Laris Pine	Lawrence	Social Worker forner Hospital Social Worker
Suzanne Hardin	Praine Village	
Beth Powers	Topeka	KS. Choice Alliance
Chris Ross	TOPEKA Topeka	KIDHE
Gie Brymyer-Ancho	McPherson	Brymyer & Wice
ABBE V ANCHO	"	"
Jane M. Smith	Topeka	observer
Elizabeth Sheridan	Lawrence	Page
Kendra Jones	Lawrence	Page

February 5, 1990

COMM. EE: SENATE JUDICIARY COMMITTEE

DATE: FEB. 5, 1990
(2)

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
ZAYANI A. GARDNER	LAWRENCE, KS	PAGE
Shahrazad Heidari	Lawrence, KS	PAGE
JACK ROBERTS	TOPEKA, KS	BC-BJ
Bill Pitsenberger	Topeka	BC-BS
Matt Lynch	Topeka	Judicial Council
Nancy Woodworth	Ovenland Park KS	Attorney - Stinson, Mag & Fizzle/O
Jodie Van Meter	Topeka	no w
Kent Vincent	TOPEKA, KS	Life Church Ministers

February 5, 1990

Senate Bill _____

AN ACT concerning victims of property crimes; relating to compensation and assistance therefor; creating certain fees and prescribing their disposition; relating to the disposition of fines, fees, penalties, forfeitures and restitution thereunder; amending K.S.A. 1989 Supp. 74-7304, 75-5211, 22-2909, 22-3718, and 75-5268, and repealing the existing sections.

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

New Section 1. This act may be cited as the property crime restitution and compensation act.

New Section 2. As used in this act,

(a) "Commission" or "Commissioners" means a county commission or such county's commissioners.

(b) "crime" or "property crime" means an act made criminal by state, county or municipal penal codes and which do not constitute criminally injurious conduct as defined in K.S.A. 1989 Supp. 74-7301(e) and amendments thereto.

(c) "collateral source" shall have the same meaning as defined in K.S.A. 1989 Supp. 74-7301(d) and amendments thereto.

(d) "local board" means a county property crime compensation board.

(e) "local fund" means a county property crime compensation fund.

(f) "loss" means out of pocket damage sustained by a victim against whom a crime has been committed. Such term does not include collateral sources.

(g) "property crime compensation board" means an entity created by a county commission, or through an interlocal agreement pursuant to K.S.A. 12-2901 et seq, an entity created by a group of counties, to administer this act.

(h) "victim" means an individual who suffers loss as a result of the commission of a crime, loss due to the good faith effort of any individual person to prevent a crime, or loss due to the good faith effort of any individual person to apprehend a person suspected of engaging in a crime. Where the context so requires, "victim" includes those persons filing a claim at the request of and on behalf of the victim, or the actual owner of property interests which were the subject of the crime.

New Section 3. (a) A county commission may establish a special revenue fund to implement this act. Such fund shall be such county's property crime compensation fund.

(b) Moneys in such fund shall be used only pursuant to authority granted in this act. Money appropriated or received in one fiscal year for use in the local fund pursuant to this act may be spend in the same or subsequent fiscal years.

(c) County commissions establishing a local fund under this section may appoint a three-person review board to administer such local fund. Such board shall from time to time review and make recommendations to the commission regarding amounts to be awarded under this act. Board members appointed by the commission shall be residents of the county. Payments from the fund shall be made pursuant to warrant and shall be approved by the county commission at a regularly scheduled commission meeting before such payment may be authorized. In lieu of appointing a separate review board, the county commission itself may sit as a local board and exercise the powers of a local board enumerated herein.

(d) Such local board may apply for, receive or accept money from any source, including financial contributions from inmates as provided by subsection (b) of K.S.A. 75-5211 and amendments thereto for the purposes specified in this act. Upon receipt of any such money, at least monthly the county commission shall cause all amounts received to be remitted to the county treasurer and deposited in and credited to the local fund.

(e) A commission may appropriate funds from other revenue sources to the local fund for use pursuant to this act.

New Section 4. (a) An application for compensation shall be made in the manner and form prescribed by the state crime victims compensation board.

(b) Compensation may not be awarded unless the crime has been reported to an appropriate law enforcement agency within seventy-two (72) hours after its discovery and the claim has been filed with the local board within sixty (60) days after the filing of such report, unless the local board finds there was good cause for the failure to report such crime within the time required.

(c) Compensation may not be awarded to a victim who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

(d) Compensation may not be awarded unless the local board finds the victim has fully cooperated with appropriate law enforcement agencies. The board may deny, withdraw or reduce an award of compensation for noncooperativeness.

(e) Compensation otherwise payable to a victim shall be diminished: (1) to the extent, if any, that the economic loss upon which the victim's claim is based is recouped from other persons, including collateral sources; or

(2) to the extent a local board deems reasonable because of the contributory misconduct of the victim.

(f) Compensation may be awarded only if the local board finds a genuine need is present.

(g) No compensation payment may exceed \$250.00 if the property crime results in a felony charge. If the crime is committed by a juvenile, whether this subsection applies shall be determined on the basis of whether a felony would be charged had the offender been an adult.

(h) No compensation payment may exceed \$150.00 if the property crime results in a misdemeanor or traffic charge. If the

crime is committed by a juvenile, whether this subsection applies shall be determined on the basis of whether a misdemeanor would be charged had the offender been an adult. If the original crime charged was a felony and through plea negotiations the adult or juvenile offender is charged with and pleads guilty or *nolo contendere* to a misdemeanor, in the discretion of the local board subsection (g) limits may apply to the compensation payment.

(i) If extraordinary circumstances are present and subject to the requirements imposed by section 3(c), the local board may exceed the amounts in subsections (g) and (h).

(j) Compensation for work loss or personal injury due to criminally injurious conduct shall be governed by K.S.A. 1989 Supp. 74-7301 et seq, and amendments thereto, and rules and regulations promulgated by the state crime victims compensation board for that purpose. No local board may duplicate compensation for criminally injurious conduct through payments under this act.

(k) The local board may determine a floor amount of compensation which would be administratively wasteful. However, once such amount is chosen it shall be made public and must be uniformly applied to all persons filing claims with such local board.

(l) The local board may provide written policy for the handling of an expedited claims process where prompt assistance and payment of services needed to repair property damage is needed to thwart the possibility of the onset of illness or disease to the victim or victim's family, and where the victim has no other means of paying for such services.

(m) No award made pursuant to this act shall be subject to execution, attachment, garnishment or other legal process, except that an award for allowable expenses shall not be exempt from a claim of a creditor to the extent the creditor has provided products, services or accommodations the costs of which are included in the payment made pursuant to this act.

(n) No assignment or agreement to assign any right to compensation for loss under this act shall be enforceable in this state.

(o) No local fund shall pay any single individual or such individual's immediate family member compensation on more than two claims within a given fiscal year.

(p) No claim shall be paid from the local fund to any corporation, partnership, or other business entity, or governmental entity.

(q) No claim shall be allowed unless the crime charged is pursuant to article 37 or chapter 21 of Kansas statutes annotated or similar crimes in county or municipal penal codes. If the crime charged is pursuant to K.S.A. 21-3707, 21-3708, 21-3722, 21-3734, 21-3725, 21-3736, 21-3737, 21-3739, 21-3748, 21-3749, 21-3750, 21-3753, 21-3754, 21-3756, and amendments thereto, no claim for compensation under this act shall be allowed. In addition to claims that may be made for criminally injurious conduct with the state crime victims compensation board, a claim for compensation for property damage may be allowed under this act for crimes charged under K.S.A. 21-3418, 21-3426, or 21-3427.

(r) Payment or payments made from a local fund under this act shall not limit, impair or preclude the ability of a court or the parole board to order restitution, and prescribe the manner and conditions of payment of restitution, as allowed by law.

New Section 5. (a) Within the limits of revenues available to a local fund, a local board may award compensation for actual out of pocket economic loss arising from a property crime if the local board is satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(b) Compensation from a local board is not a right, nor may this act be construed to confer a right upon anyone. Amounts awarded under this act, if any, are subject to the sole discretion of a majority vote of the local board. No person shall be civilly liable for any act or decision associated with the process of investigating, determining or recommending an amount of money to be awarded under this act unless such act or decision otherwise amounts to criminal conduct.

New Section 6. When two or more claims are filed for limited funding available, a local board shall give priority first to victim loss incurred from crimes where prosecutions result, second to crimes where restitution is authorized as part of a diversion agreement, and then all other victim claims.

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Section 8. K.S.A. 1989 Supp. 74-7304 is hereby amended to read as follows: 74-7304 ...

Sec. 12. K.S.A. 74-7304 is hereby amended to read as follows: 74-7304. In addition to the powers and duties specified elsewhere in this act, the board shall have the following powers and duties:

- (a) The duty to establish and maintain a principal office and other necessary offices within this state, to appoint employees and agents as necessary and to prescribe their duties and compensation, all within the limitations and conditions of appropriations made therefor;
- (b) the duty to adopt by rule or regulation a description of the

organization of the board, stating the general method and course of operation of the board;

(c) the duty to adopt rules and regulations to carry out the provisions of this act, including rules for the allowance of attorneys-attorney fees for representation of claimants; and to adopt rules and regulations providing for discovery proceedings, including medical examination, consistent with the provisions of this act relating thereto. Rules and regulations adopted by the board shall be statements of general applicability which implement, interpret or prescribe policy, or describe the procedure or practice requirements of the board;

(d) the duty to prescribe forms on which applications for reparations compensation shall be made;

(e) the duty to hear and determine all matters relating to claims for reparations compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;

(f) the power to request investigations and data from county and district attorneys and law enforcement officers to enable the board to determine whether and the extent to which a claimant qualifies for reparations compensation. Confidentiality provided by law covering claimant's or victim's juvenile court records shall not be applicable in proceedings under this act;

(g) the duty, if it would contribute to the function of the board, to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings and receive relevant, non-privileged evidence;

(h) the power to take notice of judicially recognizable facts and general, technical and scientific facts within their specialized knowledge;

(i) the duty to make available for public inspection all rules and regulations, written statements of policy, interpretations formulated, adopted or used by the board in discharging its functions, and decisions and opinions of the board;

(j) the duty to publicize the availability of reparations compensation and information regarding the filing of claims therefor.

and the property crime restitution and ~~and~~ compensation act

75-5211. Inmate employment and training; withdrawals from pay; assistance upon release. (a) The secretary of corrections shall provide programs of employment, work, educational or vocational training for those inmates whom the secretary determines are available, willing and able to participate and are capable of benefiting therefrom. Equipment, management practices and general procedures shall, to the extent possible, approximate normal conditions of employment. Such work week may include schooling, vocational training, employment at private industry, treatment or other activities authorized by the secretary. For all purposes under state law, no inmate shall be deemed to be an employee of the state or any state agency. The secretary of corrections shall credit to each inmate as a reward for such employment, an amount which shall be set by the governor but shall not be less than \$.25 per day. Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed, and any inmate who is incarcerated at the Kansas reception and diagnostic center for the purpose of receiving diagnosis and any inmate on disciplinary segregation status shall not be eligible to receive compensation as provided in this subsection.

(b) The secretary of corrections shall establish programs and prescribe procedures for withdrawing amounts from the compensation paid to inmates from all sources for the same purposes as are prescribed by K.S.A. 75-5268 and amendments thereto for moneys of work release participants, except that any inmate employed in a private industry program, other than work release, shall, in addition to the deductions specified in K.S.A. 75-5268 and

amendments thereto, have deduction of 5% of monthly gross wages paid to the crime victims reparations fund for the purpose of victim compensation. The department of corrections is authorized to make this deduction and payment to the crime victims reparations fund.

(c) (1) Upon the release of any inmate on parole, conditional release or expiration of the inmate's maximum sentence, the inmate shall be provided with suitable clothing and a cash payment of \$100. Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed or any inmate paroled to a detainer shall not be eligible to receive this cash payment.

(2) An inmate released on expiration of the inmate's maximum sentence shall be provided public transportation, if required, to the inmate's home, if within the state, or, if not, to the place of conviction or to some other place not more distant, as selected by the inmate. An inmate released on parole or conditional release shall be provided public transportation, if required, to the place to which the inmate was paroled or conditionally released.

History: L. 1973, ch. 339, § 11; L. 1975, ch. 458, § 2; L. 1978, ch. 366, § 5; L. 1980, ch. 286, § 1; L. 1981, ch. 348, § 1; L. 1984, ch. 330, § 2; L. 1986, ch. 334, § 1. 1 loss

Section 8. K.S.A. 1989 Supp. 75-5211 is hereby amended to read as follows:

or a local property crime ~~victims~~ fund

In the event a local fund has made a payment to a victim of a property crime under this act and there is an order of restitution for which monies are being withheld from an inmate under K.S.A. 75-5268, and amendments thereto, the secretary shall cause such monies deducted for use by the state crime victims compensation board to be paid quarterly to the local fund, if any, then the balance to the state crime victims compensation fund. If there is no order of restitution, then K.S.A. 75-5268 shall apply to the disposition of funds.

New Section 9. (a) All restitution awards ordered by any court after the effective date of this act shall comply with administrative order number 41 of the supreme court of Kansas. In addition to crediting restitution or reparation payments through the district court to pay for docket fees, costs, fines, reparations, restitution or attorneys fees for indigent defendants, if a payment is made from a local board, upon application by the local board to the clerk, the clerk shall from restitution amounts received pay to the local board an amount equal to the sum or sums actually advanced to the victim by the local board, except that such amounts paid by the clerk shall not exceed the amounts fixed in subsections 4(g) or 4(h).

(b) Victims may elect to receive as payment for part or all of their out of pocket loss from the local fund and the balance from the offender under court-ordered restitution.

(c) Any money recovered on behalf of the local board pursuant to subsections (c) or (d) shall be deposited in and credited to the local fund or funds.

(d) If for any reason a victim receiving, or who is authorized to receive, restitution by court order leaves no forwarding address and after reasonable diligence the victim or the victim's family cannot be located by the clerk, restitution received pursuant to this section shall be remitted to the local fund, if any.

New Section 10. (a) Within seven days after the initial contact between the victim of a reported crime and the law enforcement agency investigating the crime, such agency shall notify the victim compensation coordinator of the report of the crime and the name and address of the victim or victims.

(b) A law enforcement agency shall provide the following information to the victim:

(1) the availability of emergency and medical services numbers, if needed;

(2) the police report number, in writing;

(3) the address and telephone number of the prosecutor's office that the victim should contact to obtain information about victims rights pursuant to new sections 28 and 30 of Chapter 239 of the 1989 session laws;

(4) the name, address and telephone number of the local fund and information about victim compensation benefits, if any local board has been appointed in the county pursuant to this act.

(5) advise the victim that the details of the crime may be made public; and

(6) advise the victim of such victim's rights under new sections 28 and 30 of Chapter 239 of the 1989 Session laws.

(c) A law enforcement agency may adopt any procedure to transmit such information which substantially complies with the provisions of this section.

New Section 11. (a) An administrative judge who appoints a property crime compensation coordinator pursuant under this act shall create a payments docket to monitor the payment of criminal restitution in criminal convictions ordered by judges in the judi-

cial district. Such restitution orders shall comply with administrative order number 41 of the supreme court of Kansas. The administrative judge may assign a judge or judges of the court to administer the payments docket. Such assigned judge may be a district judge, a district magistrate judge, or a judge *pro tem*. The assigned judge shall call the docket and review cases placed on such payments docket at least quarterly. Such assigned judge shall insure that required staff is monitoring the timely payment of reparation or restitution ordered, and take such action as is necessary to insure payment as allowed in administrative order number 41 of the supreme court of Kansas.

(b) For good cause shown, if an offender is delinquent in payment of restitution, fines or court costs, the assigned judge may decrease the amount of restitution required to be paid.

(c) In determining the appropriate amount of restitution to be awarded in such a hearing or other steps the court may take to insure restitution is paid promptly, the court shall determine:

- (1) the amount of money appropriate for full restitution to victims and interested collateral sources;
- (2) whether the offender can pay by means other than cash;
- (3) whether collateral, guarantors or other forms of co-payment should be authorized;
- (4) the delinquent offender's means to pay in full;
- (5) the delinquent offender's means were adequately assessed in determining the original restitution award; and
- (6) the risk the offender poses for nonpayment of restitution; and
- (7) the victim's desires concerning restitution payments;

New Section 12. Administrative judges in judicial districts forming one or more local property crime compensation funds shall appoint at least one property crime coordinator. If more than one county is contained within the judicial district, the costs of such employee or employees shall be made pro rata by such counties in a manner in which the county commissions may determine.

The property crime compensation coordinator shall provide each victim who files a claim under this act the following information:

- (a) assistance in filling out applications for assistance;
- (b) make preliminary investigations of such claim to insure a loss occurred;
- (c) If the crime include a personal injury, assist the victim in making a claim with the state crime victims compensation board;
- (d) insure that prior to a sentencing hearing the county attorney has information sufficient to recommend an appropriate amount of restitution for the victim, or other party which has suffered loss because of the commission of such crime;
- (e) notify the local board whether the victim has cooperated fully with law enforcement agencies in prosecuting the crime;
- (f) determine and recommend whether the victim desires to receive a lump sum payment from the local board in lieu of restitution or desires full restitution paid directly by the criminal;

(g) work with court services and probation officers to track restitution payments ordered, and if a delinquency develops, to place such case on the payments docket for review;

(h) coordinate with court service officers or parole officers to insure offenders who are making restitution payments adhere to a payment plan;

(i) coordinate meetings of the local board or boards;

(j) recommend an amount of money to be paid by such local board or boards as compensation for each claim; and

(k) make annual reports on the progress of the program to the administrative judge with recommendations for improving the program.

New Section 13. The administrative judge shall, annually, cause to be compiled a report of the property crime compensation fund or funds existing within such judicial district and forward such report to the office of judicial administration by the first day of December of the year beginning the next full year after implementation of such local program. The office of judicial administration shall compile such reports submitted by administrative judges, and send a composite report annually to the governor and the state legislature.

Sec. 6. K.S.A. 22-2909 is hereby amended to read as follows:
22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the county or district attorney, the county or district attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary

examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the ~~right to~~ *rights to counsel and trial by jury*. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 and amendments thereto for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567 and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008 and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging ~~an alcohol related offense a violation of~~ K.S.A. 8-1567 and amendments thereto, the diversion agreement may restrict the defendant's driving privileges, in addition to any suspension and restriction required by K.S.A. 1988 Supp. 8-1014 and amendments thereto, to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement.

In lieu of restricting the defendant's driving privileges as provided above, or in lieu of suspending or revoking such privileges, the diversion agreement may restrict the defendant's driving privileges to driving only a motor vehicle equipped with a functioning ignition interlock device, as defined by K.S.A. 1988 Supp. 8-1013 and amendments thereto, which is approved by the division of vehicles of the department of revenue and is obtained, installed and maintained at the defendant's expense. Any fine required by ~~this~~ subsection (c) shall be reduced by the diversion agreement in an amount equal to the expense incurred by the defendant for obtaining, installing and maintaining such device.

Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Section 14. K.S.A. 22-2909(a)
is hereby amended to read as

If a county creates a local fund, a county or district attorney shall require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100.00. Such fees shall be deposited into the local fund and disbursed pursuant recommendations of the local board under the property crime restitution and victims compensation act.

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Upon entering a diversion agreement restricting a person's driving privileges under this subsection, the county or district attorney shall require that the license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and that a certified copy of the diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The county or district attorney shall furnish to any person whose driving privileges have been restricted under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection.

Upon expiration of the period of time for which restrictions are imposed pursuant to this subsection, the licensee may apply to the

division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension as provided by K.S.A. ~~1987~~ 1988 Supp. 8-291 and amendments thereto.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense a violation of K.S.A. 8-1567 and amendments thereto, the diversion agreement may suspend or revoke the defendant's driving privileges. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking a defendant's driving privileges pursuant to this subsection, the county or district attorney shall require that such license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been otherwise suspended or revoked prior to expiration.

(f) Except as provided in subsection (g), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the county or district attorney finds that the defendant is indigent, the fee may be waived.

(g) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (f) are permissive and not mandatory.

(h) If the county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

~~(i)~~ (i) Except diversion agreements reported under subsection ~~(h)~~ (i), the county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to any county, district or city attorney or court.

~~(h)~~ (j) At the time of filing the diversion agreement with the district court, the county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto. The copy of the agreement shall be made available upon request to any county, district or city attorney or

New Section 15. In addition to other duties prescribed by law, court service officers in judicial districts with local boards shall advise the property compensation coordinator if there is no compliance or undercompliance with a restitution plan ordered by a court.

I 12/14

5204B. Work release and job training programs; disposition of compensation. Any inmate who is allowed to participate in such paid employment or in such job training or paid employment for which a subsistence allowance is paid in connection with such job training shall pay over to the secretary or the designated representative of the secretary all moneys received from such paid employment or job training except that, pursuant to rules and regulations adopted by the secretary of corrections, the inmate shall retain a stipulated reasonable amount of the money as the secretary or the designated representative of the secretary deems necessary for expenses connected with the employment or job training. The balance of the moneys paid to the secretary or the designated representative of the secretary shall be disbursed for the following purposes:

(a) A designated minimum amount of that

money paid to the secretary shall be returned to the state general fund or to the political subdivision, federal government or community-based center for such inmate's food and lodging or, if the inmate is participating in a private industry program other than work release, the minimum amount collected shall be deposited to the correctional industries fund;

(b) transportation to and from the place of employment at the rate allowed in K.S.A. 75-3203 and amendments thereto;

(c) If any of the dependents of the inmate are receiving public assistance, a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be forwarded to the court which ordered support for the dependent or, if there is no order, to the secretary of social and rehabilitation services;

(d) If subsection (c) is not applicable, then a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be disbursed for the payment, either in full or ratable, of the inmate's obligations acknowledged by the inmate in writing, or which have been reduced to judgment;

(e) payment of a reasonable amount into a savings account for disbursement to the inmate upon release from custody; and

~~(f) the balance, if any, shall be credited to the inmate's account and shall be made available to the inmate in such manner and for such purposes as are authorized by the secretary.~~

History: L. 1973, ch. 339, § 13; L. 1990, ch. 236, § 2; L. 1984, ch. 330, § 3; L. 1988, ch. 218, § 4; July 1.

follows. New Section 16.
75-5268:

70
KSA 75-5268 is hereby amended to read as

(f) payment of a reasonable amount to the clerk of the district court in which the crime occurred pursuant to an order of restitution. Such payment shall be required only if the inmate is incarcerated for a crime or crimes for which restitution is or could be ordered pursuant to the property crime restitution and compensation act. Such payment shall be in addition to any amount withheld and ordered paid as restitution to the state crime victims compensation board.

New Section 17. K.S.A. 1989 Supp. 74-7304, 75-5211, 22-2909, 22-3718, and 75-5268 are hereby repealed.

New Section 18. This act shall take effect on January 1, 1991.

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.

(Date)

(Name and Title of
Authorized Representative)

DISTRICT COURT OF KANSAS

CHAMBERS OF
DAVID P. MIKESIC
DISTRICT JUDGE



COURTHOUSE
KANSAS CITY, KANSAS
66101

WYANDOTTE COUNTY

February 1, 1990

Senator Wint Winter
Chairman
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Re: Senate Bill 431, An Act concerning Adoption

Dear Committee Members:

I have had an opportunity to review S. B. 431, and I believe it is a good piece of legislation, that with a few changes could be a great piece of legislation. As you are aware, an adoption is one of the most important events that can occur in the life of not only the adopted child, but also in the life of the genetic parent and adoptive parent.

In Wyandotte County we average between 100 and 160 adoptions per year. Each adoption is as important to the court as a mega-dollar med-mal lawsuit. Everyones rights need to be protected by laws that are both fair and humane. Please consider some of my concerns with S. B. 431, and also allow me to make some recommendations for change. In New Section 2, under residence of a child, residence is defined. However, there is no allowance for a "father who has custody of a child and the mother is absent and the parents were not married."

In New Section 4, page 2, on line 21 after final, add "72 hours after" and strike "when", further in line 23 strike all after that, and add "it would be in the best interest of the child to allow the consent to be withdrawn".

In New Section 6, page 2, in line 36 strike 12 and insert 72.

The rationale for these proposed changes would be to allow a 72 hour "cooling off" period after the birth of a child and a further 72 hour period for the parent to reconsider their action after the initial consent signature. Aren't children as important as pots and pans or encyclopedias?

In New Section 10, page 3, a provision should be added that states "no adoptions should be permitted to any petitioner that resides in

Senator Wint Winter
February 1, 1990
Page Two

a state that is not a member of the Interstate Compact or placement of children." Rationale for change: We should not allow our Kansas citizens to be shipped out to states that are not interstate members, for example New Jersey.

In New Section 11, page 3, on line 39, after exceed add "local". On page 4, in subsection (b) add a new provision along the following concept. All fees should be based on an hourly rate of compensation. Counsel shall prepare and submit said timesheet at least 10 days prior to the hearing on the petition. No attorney fees may be accepted by counsel until approved by the court.

Rationale for this change: Its easier to give an attorney fees than it is to take them away, especially in partisan judicial districts.

In New Section 12, page 4, line 21, shouldn't "parties in interest" be defined and added to New Section 2?

On page 5, subsection (d), isn't this concept inconsistent with New Section 4? What is the difference between a consent and a relinquishment?

New Section 16, page 5, line 39 adds a new concept inconsistent with the definitions on page 1, New Section 2(e) where you refer to "residence of a child" and "place where a child resides" but not "county in which the child resides".

In New Section 16 (a) and (b), page 5, line 38-43, doesn't it make sense to rewrite these sections to state the petition is first to be filed in the county where the petitioner resides? Isn't it more important for the court to be involved where the child will live, instead of where the child has been?

On page 6, line 10, after affidavit, insert "separate from the petition".

In New Section 17, page 6, on line 38 add a new provision. "The clerk shall not accept the petition for filing unless all requirements of Section 17 are complied with by counsel".

On page 7, New Section 19, line 23, after (a) add "Two copies of".

On page 8, line 23, after petition insert "two copies of".

On page 9, line 7, after and, add "two copies".

On pages 13 and 15 I like the form consents but shouldn't we also ask the parent if anyone has put any pressure on them to relinquishment

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of their rights? Also ask "if anyone has promised them anything or given them anything of value to induce them to consent to the adoption?" Also advise in the form that they have 72 hours to withdraw their relinquishment or consent. Shouldn't we as a society treat natural parents with compassion and at least advise them of their rights just as we advise a criminal of their rights? Last, shouldn't you recommend that adoptions be placed in Section 38 of the statutes instead of Section 59? Juvenile code deals with children more than the Probate code.

Thank you for your time and consideration of these matters. If you have any questions please feel free to contact me.



Judge David P. Mikesic
Wyandotte County District Court
Division 10
913-573-2834

DPM/bp

Summary of Testimony
Senate Judiciary Committee
Monday, February 5, 1990
SB-431 Revision of Kansas Adoption Laws

Jill Bremyer-Archer for the firm of Bremyer & Wise, P.A., P.O.
Box 1146, McPherson, Kansas 67460; (316)241-0554.

Proponent of the bill, calling attention to the following issues
which need to be addressed:

Sec. 2. "Birth" parent should be defined and used throughout the
statute, rather than a variation, such as "genetic," which is
used in the present draft of the proposed law.

Sec. 4(b). The wording here is ambiguous and should be
clarified. The problem, basically, lies in the use of the
language "no sooner than," which leaves room for more than one
interpretation.

Sec. 5. Independent legal counsel for a minor should not be
required to be present at the execution, providing that the
independent legal counsel has met with the minor parent not more
than 30 days preceding the birth of the child and has filed an
affidavit that he or she has explained the consequences of the
adoption to the birth parent and that the birth parent is making
his/her decision to relinquish the child as a free and voluntary
act.

Sec. 11. This section should also provide that help may be given
to the birth mother of an older child, who, because she has had
to quit school or work to care for the child, may be in need of
assistance with actual living expenses for up to six weeks. This
section should also, specifically, mention provision for
counseling for the birth parents as one of the allowable
expenses.

Sec. 19(d). This section should provide that the birth parents
will be advised, in writing, of the procedures for updating their
genetic, medical, and social histories, as well as the child's.
Also, the statute should only require that the petitioners
certify that the means for so updating the genetic information
have been explained to the birth parents, thus allowing an
attorney, who works closely with the birth parents, rather than
the social worker, to so inform them.

Sec. 22(b). This section should be revised so that birth parents
are allowed to enter their appearance and waive notice of hearing
as a part of their consent, thus preserving the confidentiality
of the adoption and allowing those birth parents who wish to do
so to put this experience behind them at the time of the signing
of the consent.

Sec. 25(6). Here the term "rape" should be defined to establish
whether this means an allegation of rape; a filed police report,
charging rape; or an actual conviction of rape.

LAW OFFICES
BREMYER & WISE, P. A.

THE PIONEER BUILDING

KANSAS AT MAPLE

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JILL BREMYER-ARCHER

BRETT A. REBER
CASEY R. LAW

OF COUNSEL:
GARY L. FLORY

January 22, 1990

The Honorable Wint Winter, Jr.
P. O. Box 1200
Lawrence, Kansas 66044

Re: Proposal No. 31
Special Committee on the Judiciary

Dear Mr. Winter:

This letter is a follow-up to our letter, sent earlier this month, regarding the proposed legislation, referred to as the Kansas Adoption and Relinquishment Act. We are in possession of Proposal No. 31 by the Special Committee on the Judiciary, 9 RS 1625.

We support the revisions in the proposed legislation, although there are several issues which we feel need further clarification. We would like to go through some of those issues, and our concerns, specifically, in the paragraphs which follow.

As proposed, Section 4(b) reads:

Consent in all cases shall have been executed no sooner than six months prior to the date the petition for adoption is filed.

The wording here is ambiguous and should, we feel, be clarified. The problem, basically, lies in the use of the language "no sooner than," which leaves room for more than one interpretation.

In general, we support the concept that every minor parent should have the advice of independent legal counsel prior to signing a consent, but we disagree that the independent counsel should have to be present at the time the consent is actually executed. The practical logistics of getting an independent attorney with the birth parents following

The Honorable Wint Winter, Jr.
January 22, 1990
Page 2

delivery could effectively leave the baby in limbo during a time when he/she is most in need of care and transitional bonding. It seems to us it should be sufficient that an attorney has met with the birth parents within some reasonable period, such as sixty (60) days preceding the execution of the consent, to explain the consent form, clearly go through the consequences of signing the consent at the time of the baby's birth, and confirm, in writing, that the decision is a free and voluntary one. At the time of the actual signing of the consent, then, it will be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments.

Section 11(6) deals with the provision of reasonable living expenses for the birth mother, which are incurred during or as a result of her pregnancy. We have recently worked with some young women, working through an adoption for an older child, after some months/years of carrying the financial and emotional responsibilities of raising the child as a single parent. Though we understand the intention of the law to avoid a situation where help might be offered and so influence the mother's decision, it does seem fair to believe that these birth mothers, some of whom have had to quit school and/or working to care for the child, also have a legitimate need for and right to some financial assistance, for one month or six weeks, until they can again find employment. Such help would have to represent actual living expenses and be itemized on the accounting to the court. Section 11 might also explicitly provide for counseling for the birth parents. Basically, we believe that, although examples of proper expenses might be given in the statute, they should not be exclusive or limited to pregnancy. The Court should be the ultimate decision-maker as to what is proper under the circumstances.

The Honorable Wint Winter, Jr.
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Under Section 19(d), the agency or person conducting the investigation under Section 21 shall advise, in writing, each of the child's birth parents, if known, of the procedures "for updating the child's genetic, medical, and social history if new information becomes known" after the filling out of the original forms. It seems to us that the same should hold true for updated information on the birth family's subsequently discovered medical information. It would be especially important for the adoptive parents and the child's doctor to be aware of such medical problems. Provision might also be made so that the attorney for the birth parents, as an alternative to the social worker doing the assessment, may advise the birth parents of the means for making such updates since, in many cases, he will have close, continued contacts with the birth parents over a long period of time. The social worker, in many instances, has no contact with the birth parents. The statute should only require that the petitioners certify that the means of updating the genetic information has been explained to the birth parents.

Review { A serious confidentiality problem arises in new Section 22(b), which requires that, in independent and step-parent adoptions, notice of the hearing on the petition will be given to the parents, or presumed parents, unless parental rights have been previously terminated. It is our position that the birth parents should be allowed to enter their appearance and waive notice of that hearing as a part of their consent. Often, the birth parents want to put this whole experience behind them and would prefer not receiving notices. Also, the confidentiality of the adoption would, in that way, be preserved.

In Section 25(6), the term "rape" should be defined to establish whether this means an allegation of rape, a filed

The Honorable Wint Winter, Jr.
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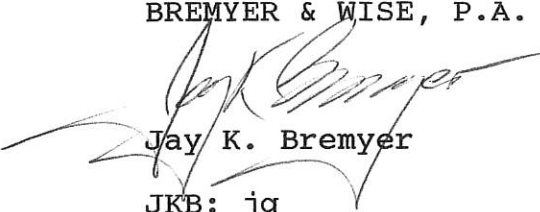
police report, charging rape, or an actual conviction of rape.

In general, we approve the Kansas Adoption and Relinquishment Act, as proposed, particularly those sections related to the timing of the birth parents' consents, venue for adoption cases, etc., which will protect the rights and interests of all parties to the adoption, while still not making the laws unwieldy and impractical for the care providers and others directly involved with the logistics of the actual adoption.

We wish to express our appreciation to the committee and all who have spent many hours in carefully codifying and refining our adoption statutes. We would very much appreciate any further updates you can provide to us.

Very truly yours,

BREMYER & WISE, P.A.



Jay K. Bremyer

JKB: jg



Jill Bremyer-Archer

DATE: February 5, 1990
NAME: Ganis LaRee Pine, LMSW
SUMMARY: Testimony
RE: Senate Bill 431

I. Introduction

II. Background and reasons for supporting S.B. 431

A. Current adoption practices: need for independent legal counsel

1 Case Incidents

- a. Birthmother left to pay costs of own birth
- b. Broken verbal agreements
- c. Manipulation by attorneys & physicans

B. Adoption as surrounded by many "myths"

C. Out of State Adoptions

- 1. Current practices
- 2. Medicaid paying costs for some deliveries

SUMMARY

Submitted by:

Susan R. Lovett
2802 Syler Drive
Hutchinson, KS 67502
316/662-1285

Adoptee - reunited 1982

Speaking on behalf of the American Adoption Congress

We support Senate Bill No. 431, with the exception of New Section 12, Line 21. We feel it should read " Parties in Interest SHALL INCLUDE BIRTHPARENTS". We believe that adopted persons and birthparents should be treated no differently than other citizens. The way this section is now written denies birthparents the equal protection of the law.

Not all birthparents choose searching as an option - but please don't tell those that do "We're sorry you cannot have that information because you are NOT a party in interest".

The search process does not mean a deliberate disruption of lives. It can be the most rewarding process for all concerned. The birthparent can rid themselves of the guilt that have felt over the years and the adoptee can say thank you for making the greatest sacrifice in your life. I am just asking you to reconsider the wording in this bill and let the healing process begin.

Statement of Purpose of the American Adoption Congress:

The American Adoption Congress believes that growth, responsibility and respect of self and others develop best in lives that are rooted in truth.

The American Adoption Congress is therefore committed to acheiving changes in attitudes, policies and legislation that will guarantee the availability of and access to idenfitying information concerning one another to all adoptees and their birth and adoptive families.

I. INTENT OF THE BILL LAUDABLE.

Baby selling is anathema, and the provisions of this bill regulating this abuse seem workable and appropriate. But the expansion of the rights of the "unwed" father is frightening.

II. "CHOICE" ENDS AT BIRTH.

In every instance that I am aware of the young women who admitted to having an abortion said they were against abortion and never thought they would have one. They went on to cite compelling cases against the "unwed" fathers as their reason for aborting their babies. In Kansas a woman is free to choose abortion, but cannot choose adoption because the Kansas statutes grant such broad rights to the putative father. Even where "clear and convincing" evidence proves rape or the father's unfitness, the prospect of the post-birth proceeding itself is daunting and never in the child's best interest.

III. CONSTITUTIONAL LAW DOES NOT REQUIRE THIS.

Stanley and the other United States Supreme Court cases do not require the extremes we have reached regarding unwed father's rights. The landmark cases holding for the unwed father concerned fathers who had actually raised the children for several years. In the only case dealing with a newborn, the unwed father's rights were denied.

IV. A PROPER STATUTE MAY BE PRO-LIFE AND PRO-CHOICE

It is time to once again make it a unwed woman's right to choose life for her newborn while protecting the civil rights of "unwed" fathers.

To: Rep. Mike O'Neal, Chairperson
Sen. Wint Winter, Vice-Chairperson
Committee Members

Re: Senate Bill 431

Honorable Chairman & Members of the Senate Judiciary Committee. Thank you for the opportunity to present my views on Senate Bill 431.

My name is Rochelle Harris, speaking for Wichita Adult Adoptees, a search/support group. The group was formed by Susan Lovett in 1981. We are viewed in the community as responsible in handling search in a mature manner.

I joined in 1983 and accepted responsibility for it's continuation when Susan moved from Wichita in August 1988.

Our members are opposed to excluding birth parents access to the adoption file of the adult adoptee.

In preparation for today I reviewed our present members and would like to share this information with you.

Catagory	Ages	Average Age
Female Adoptee	85 to 21	40
Male Adoptee	53 to 19	36
Birth parents	77 to 38	45
Others-siblings, adoptive and birth relatives	64 to 21	43

This information was from 169 people.

Many adoptive parents attend our meetings & assist in search but far more feel threatened by the very word. Over half of our members never share the fact they search or the results with their adoptive parents because of the adoptive parents fears. It is sad they must hide their news from ones they love the most.

Birth parents seek out the adoptee in adulthood to relieve grief, share medical information and with the hope of friendship. They do not come to replace the adoptive parent.

Many members of our group have sent letters to this Committee discouraging the words " parties in interest, shall not include genetic parents". Wichita Adult Adoptees would ask you to consider the following " parties in interest, shall include the adult adoptee and birth parents".

Many judges in Kansas only consider " parties in interest" as the adoptive parent.

A minor can commit murder and is sent to a juvenile detention center til age 21. Must a giver of life be treated more severely by closing the adoption file to them for life?

Again, thank you for this opportunity to be heard and I would welcome any questions you may have.

ROCHELLE HARRIS
316/684-7432

FAYE SHOGREN
316/263-3587

Wichita Adult Adoptees
A Search/Support Group For People
Who Are Adopted Or Who Have
Relinquished Children for Adoption.

4921 E. HARRY #330
WICHITA, KANSAS 67218

ATTACHMENT IX

2-5-90

page 1 of 1

GENETIC PARENTS

Summary

When the wording "GENETIC PARENT" is used, it leaves a bitter taste in my mouth. To a birth Parent, this could be a very harsh and demeaning statement. True, they are the adoptee's genetic value, but they are also human beings, with feelings and pain.

We who are the Adult Adoptees, have the rights given us by this State, the right to have access to our records, which are some times altered. We do not know the truth due to the leadership of private and state run hospitals, lawyers and even doctors. Sometimes, it is necessary to know the families genetic value. Thanks to our open laws, each of the birth mothers who relinquished a child has the right to search for them when that child reaches the age of majority.

When people lie to their children about being adopted, those parents should be punished by being guilty of mental abuse. When we as adults do not know this factor, who is to say that we could of unknowingly married our own biological sisters, brothers, cousins, mothers or fathers. If you have ever done any genealogy, you will understand that inter-marriage was at one time an accepted practice. But since medical advancements, we now know that "genetics" go awry with these inter-marriages. Wouldn't that be something for the state to be proud of.

To use the terminology "Genetic Parent" in this bill would only confuse the issue. Birth parents and Adult Adoptees are the only "Parties in Interest" and should be included to have the rights to the adoption files, when the birth parents and the adoptee are at the adoptee's age of majority.

Sharon A. Peters

DOUGLAS J. KEELING

ATTORNEY AT LAW

400 NORTH WOODLAWN, SUITE 6

WICHITA, KANSAS 67208

(316) 685-2210

January 31, 1990

Senate Judiciary Committee
c/o Senator Wint Winter, Jr.
State House
Topeka, KS 66612

Re: Senate Bill No. 431 - Kansas Adoption Act

Dear Committee Members:

At Mr. Winter's invitation, I am submitting my further comments on the revised Senate Bill No. 431. I thank you for the consideration given my earlier comments in making revisions.

The only portion of the proposed Bill with which I still have concern is new Section 22(b). Under that provision, it is a requirement that notice of the final hearing on the adoption petition be given to the parents or presumed parents, unless parental rights have previously been terminated. There continues to be no mechanism in the language by which a parent or presumed parent can waive this notice requirement, either as a part of the consent or under a separate document.

In my experience, natural parents who freely and voluntarily consent to the adoption of their child many times struggle with the difficulty of this decision well after the consent or relinquishment documents are signed. Many of them specifically ask whether or not they will receive any further notice of court proceedings, or be required to appear at the final hearing. Their interest is very much in getting the matter over with, and in avoiding continuing involvement or notices.

Receipt of a notice of the proceedings in such a case can be both upsetting and cause for concern on the part of a consciences natural parent. A formal legal notice received by way of certified mail or personal service serves only as a reminder of a painful experience. Receipt of that same notice without a letter of explanation might compel some natural parents to wonder whether or not they are being notified that they are required to attend the hearing.

Special Committee on Judiciary
January 31, 1990
Page 2

Current law, codified at K.S.A. 59-2278(b) specifically excludes "parents whose parental rights have been terminated or parents who have voluntarily relinquished a child for the purpose of adoption" from the notice requirements thereof. While the Committee may not wish to go so far as to incorporate this previous exclusion, I would strongly recommend that the possibility for inclusion of language allowing a knowing and voluntary waiver of such notice be reconsidered for the new law.

I have also made note that Section 34 incorporates language that had previously been contained in House Bill No. 2392 before the Committee on Insurance. I would strongly recommend and support inclusion of House Bill No. 2391 before that same Committee under this proposed Bill. In my opinion, if the insurance-related matters of adoption are going to be addressed, they should be addressed by virtue of these parallel bills in unison, rather than inclusion of one and exclusion of the other. Any effort to create equal treatment for insureds who are adoptive parents rather than parents of naturally-born children should address issues of coverage for both the adopted child and medical expenses related to the prenatal care, delivery and birth of the child. Only in this way can true equality be achieved.

I thank you for the opportunity to present my comments to the Committee.

Yours sincerely,



Douglas J. Keeling

DJK/re