PROBATE AND CIVIL PROCEDURE SUBCOMMITTEE

Senator Richard Rock, Chairman

March 15, 1990 - Room 522-S - 10:00 a.m.

SB 523 - infectious disease testing.

Withdrawn and hearinng cancelled. (Two bills currently in House, committee held hearing and assigned bill to subcommittee.)

SB 661 - child support payment centers to handle support payments.

Withdrawn and hearing cancelled (at request of SRS). (ATTACHMENT 1)

Written testimony regarding SB 661 had been received prior to the cancellation of the hearing. The testimony was presented to the Subcommittee from.

Judge Herbert Walton opposed SB 661. (ATTACHMENT 2)

Amy Hackler, Johnson County, opposed SB 661. (ATTACHMENT 3)

HB 2462 - construction and interpretation of trusts.

PROPONENTS

None appeared

OPPONENTS

Ed Larson, Kansas Judicial Council Probate Committee

Subcommittee recommendation: **Amend so that venue agrees with provisions of the previously passed SB 690 and report favorable as amended.**

HB 2469 - income withholding for enforcement of support.

PROPONENTS

Jamie Corkhill, Kansas Department of Social and Rehabilitation Services (ATTACHMENT 4)

OPPONENTS

Charles Cook, Topeka (ATTACHMENT 5)

Greg Patton, Parents Wanting Equal Custody and Families Demanding Equal Justice, Inc. (ATTACHMENT 6)

Subcommittee recommendation: **No recommendation made.**

Consensus of subcommittee was to seek a way to amend bill reference persons with good record of custody payments, and to modify extra costs assessed against persons subject to the act.

HB 2643 - rules of pleadings, damages in excess of $50,000.

PROPONENTS

Matt Lynch, Judicial Council

Ron Smith, Kansas Bar Association (ATTACHMENT 7)

OPPONENTS

None appeared

Subcommittee recommendation: **Report favorable and place on Consent Calendar.**

HB 2645 - district court; disposition of money received by the clerk.

PROPONENTS

Representative Fred Gatlin

Paul Shelby, Office of Judicial Administration

Carolyn Burns, Clerk of the Court

OPPONENTS

None appeared

Subcommittee recommendation: **Amend effective dates and report favorable as amended.**

HB 2688 - attorney fees taxed as costs in certain actions involving negligence.

PROPONENTS

Mark Works, Kansas Trial Lawyers Association (ATTACHMENT 8)

OPPONENTS

Terry Stevens, Topeka Metropolitan Transit Authority

Subcommittee recommendation: **Report favorable.** Senator Morris voted no.

HB 2690 - amendments to the charitable organizations and solicitations act.

PROPONENTS

D. Jeanne Kutzley, Assistant Attorney General (ATTACHMENT 9)

written comments from Nola Fulston, Sedgwick County District Attorney (ATTACHMENT 10)

OPPONENTS

None appeared

Subcommittee recommendation: report favorably.

HB 2753 - railroad not automatically liable to pay attorney fees in fire damage claims.

PROPONENTS

Nola Wright, Santa Fe Railroad

OPPONENTS

Subcommittee recommendation: report favorably.

HB 2996 - notice of agency action resulting in right to request a hearing pursuant to KAPA must include a statement informing the person that written request for hearing must be filed with agency within 15 days of notice.

PROPONENTS

Mark Stafford, Assistant Attorney General (ATTACHMENT 11)

OPPONENTS

Subcommittee recommendation: report favorably and place on Consent Calendar.

HB 3043 - concerning civil procedure; increasing compensation for screening panel members.

PROPONENTS

Chip Wheelen, Kansas Medical Society (ATTACHMENT 12)

OPPONENTS

Subcommittee recommendation: amend with technical suggestions of staff and report favorably as amended. Senator Martin voted no.

The Subcommittee concluded its business for the day.

STATE OF KANSAS

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SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY
VICE-CHAIRMAN: WAYS AND MEANS
MEMBER: JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
ECONOMIC DEVELOPMENT
KANSAS JUDICIAL COUNCIL

March 15, 1990

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Senator Wint Winter, Jr.

RE: Senate Bill 661

This measure was introduced at the request of SRS and has to do with child support payments and the federal requirement to track child support payments. It was originally scheduled for hearing in the Probate and Civil Procedures Subcommittee on March 15.

The hearing has been cancelled at the request of SRS. It is my recommendation that this bill and the related issue of child support enforcement be considered by the Special Committee on the Judiciary in the 1990 Interim. This issue has implications regarding both (1) legal issues with respect to child support enforcement, and (2) fiscal issues with respect to the use and purchase of computer equipment. The issue is one which has been circulating for several years and it is critical that the Legislature solve the problem during the 1990 Interim.

WW:gc

CC: Senator Gus Bogina
Senator Joe Harder

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SENATE JUDICIARY COMMITTEE

(SUB-COMMITTEE ON SUPPORT PAYMENTS)

Distinguished members of the Kansas Senate. My name is Herbert W. Walton and I am the Administrative Judge of the Tenth Judicial District (Johnson County, Kansas). I further have the privilege of serving as Chairman of the Family Law Advisory Committee of the Kansas Judicial Council and Chairman of the Supreme Court Advisory Committee on Child Support Guidelines. I appear today to express deep reservations and concerns over proposed Senate Bill 661. In my judgment, the bill is not in the interest of the children of Kansas and represents a step backwards in the collection and enforcement of child support. With your permission, I would like to quickly review some of my concerns.

To start with, this bill will have a significant impact upon the children of Kansas. It will directly affect the receipt of child support and influence the economic environment of the family. It goes without saying that we have a responsibility to our children to carefully consider and study new ideas and suggestions before they are hurriedly enacted. In this respect, those entrusted with the responsibility of child support enforcement were not contacted prior to the introduction of this

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1/11

far-reaching proposal. Had the agencies been contacted, the following concerns would have undoubtedly been expressed.

1. The stated tenet of the bill is to expedite the receipt and payment of child support. In my judgment, the opposite will occur. Instead of sharing immediate financial information about the receipt and payment of child support, the bill envisions the payment of all child support in the state of Kansas into a central depository. I assume this means that one of our banks would receive the money in some planned accounting procedure and disburse the money to the entitled obligee. This will require the forwarding of the payments to a central center with a resultant delay of at least two or more days by the U.S. Postal Service. Upon receipt of the information, the clerical application will take another day along with a resultant delay of two or more days in the receipt of the support instrument. This represents a step backwards and will, in fact, delay the receipt of child support instead of expediting it. In Johnson County, Kansas, our District Court trustee disburses child support to the obligee within one working day. Our system is fully automated and the obligee receives the support payments as fast as possible. A delay of several days by forwarding the money to a central depository will only increase the delay and create an atmosphere of obligee anxiety.

2. The hurried application of such a bill without prior consultation with the enforcement agencies of the state gives a chilling affect on confidence in government. Frankly, I have grave reservations over any state agency that proposes such a sweeping bill without prior study. Such actions are a breeding ground for a lack of confidence in inter-governmental affairs.

3. The basic plan will use the money of the obligee to fund yet another layer of child support enforcement. I presume that the support payment center will be a large bank that will receive the child support payments. The money will be received by that institution from the continuous flow of child support. The system will probably invest the money or the lag time interest will be used to defray the expenses of the operation. As a result it will provide a built-in fee system from the central support payment center that is funded by child support destined for our youth. When considering the unlimited discretion granted to the Secretary of SRS to pass rules and regulations, this raises grave concerns for the financial environment of the Kansas family. For example, the Secretary could justify the non-payment of the child support until the payment instrument is honored upon presentation thereby providing additional delay and more interest for the bank.

4. In my judgment, the bill itself does not provide for a central payment center. In Section 3(a), it gives the Secretary

authority to adopt rules and regulations for the establishment of ". . . one or more support payment centers for the purpose of receiving and disbursing payments. . .". Furthermore, the payment of the child support into a central depository creates a debtor-creditor relationship between the obligee and the Secretary. If the available funds of SRS from the pour-in pool are exhausted, there could be no funds to make the obligated payments of child support. This would create a further potential of mischief and difficulty for the obligee. Again I remind you that our Trustee pays child support within one working day.

5. I have real concern over the assumption of SRS that they have legal authority over non-IV-D cases. It is clear that the federal mandates are primarily concerned with IV-D cases or cases involving the expenditure of federal funds for aid to dependent children. In Johnson County, Kansas, this is very important. Of the $27,000,000 collected in 1989, some $21,000,000 of that sum was for non-IV-D cases. There are no federal mandates to my knowledge that would require a central repository or payment center for non-IV-D cases or for that matter, IV-D cases.

6. The central support payment center cannot match the efficiency of the District Court Trustee in the receipt and payment of child support. Some three years ago, our District Court Trustee contacted Bank IV to see if they had automated

services that could enhance our service. After a careful study Bank IV concluded that it was not feasible. Thus, this gives credence to the fact that the underlying premise of the bill needs to be carefully considered to see whether or not it is, in fact, an improvement. Frankly, if a system is working well it should not be "fixed". If another agency desires to change a successful operation, that agency should have the burden of proof to prove and demonstrate that they have a more efficient methodology. In my judgment, this cannot be done and the central purpose of the proposed plan is flawed.

7. I have a concern over what will be the official record of child support payments. Whenever a judge orders child support to be paid on a periodic basis each payment becomes a judgment when due. If we have support records in a bank in Topeka or elsewhere, how will these records affect the legal judgment? This is extremely important when it comes to actions relating to the enforcement of child support. The blanket power of rules and regulations by the Secretary gives little confidence to solve this difficult issue. Our present official records are either that of the Clerk of the District Court or the District Court Trustee. Are we to now add a new dimension and provide for an official record in a banking institution that is several miles away from the county courthouse?

8. In my judgment, the bill will dismantle the office of the District Court Trustee. While it is true that the scrivener indicates that the office will be maintained until the rules and regulations are formulated, it is equally true that all authority inconsistent with the power of the Secretary as promulgated under rules and regulations, is superseded and rendered inoperative. The Secretary is given unlimited power through rules and regulations with the only breaking mechanism being the ". . . written concurrence of the judicial administrator." It is true that a benevolent dictator is the most efficient form of government, but who determines whether or not the party is benevolent? A careful review of proposed Section 6 is far reaching. In my judgment, I foresee nothing but storm clouds in the future from this unbridled delegation.

9. The District Court Trustee has the capability to provide a more balanced and efficient system of child support collection. We were privileged to pioneer that system in Johnson County in 1972. In 1989, we collected over $27,000,000 in child support. The authorized 1-1/2% user fee pays for all costs of the child support enforcement with the exception of facility use. I have attached to my remarks excerpts from the recent State of the Judiciary Message of Johnson County for 1989. This document reflects that we have a very efficient and well managed department. We are fully automated and have software in the process of development to link with and satisfy daily information

to SRS on all IV-D and non-IV-D cases. In my judgment, we have the premier child support enforcement office in the Midwest. It is frequently studied by other governmental units and represents the state-of-the-art in child support enforcement. Yet, we constantly look at new ideas and suggestions to improve and make it better. We feel we can do a far better job on a local level with automated information sharing than can be done by SRS.

10. The Kansas Judicial Council recognized the far reaching consequences of Senate Bill 661. In action taken on Friday, March 9, 1990, after careful attention, the Council voted to have a study made of the subject matter of the bill. As you know, the Council has a history of thorough and considered research in legislative considerations. It is my hope that the Legislature will not enact this bill. However, if there is a need to seriously consider its provisions, we owe it to our children to have a thorough and well-considered study. I would request this sub-committee to recommend a referral of the matter to the Judicial Council for study and report.

It has been a pleasure to make these brief remarks before the Committee. We are at your disposal to provide any additional information at our command to assist in this important subject matter.

Several in-house court procedural workshops have been conducted in 1989 with technical assistance provided by the Office of Judicial Administration for some, e.g. child support enforcement statistical procedures, small claims procedures, personnel evaluations and benefits administration, juvenile procedures, multi-part appearance documents procedures, stat. filings/terminations, protection from abuse, etc. Non-judicial personnel continuing education in professionalism was also conducted in May.

In February we had a Productivity Review which yielded many good recommendations and suggestions to implement. We also had a Court Account procedural review that provided insight into areas for modification.

In order to combat the severe shortage in personnel, we have pursued a few avenues. The Civil office was restructured slightly by combining job functions that had been somewhat duplicative; some accounting functions were also consolidated into the accounting department. The third floor microfilming and filing functions were combined. Multipart appearance docket sets replaced the large docket books for those cases not on computer. Job enlargement and job enrichment have been provided to court staff through reassignment of job duties. The caliber of the employee is clearly indicated by the way in which the changes were successfully handled.

Some goals for the coming year are to replace our legal file cabinets/folders with open shelving and pre-numbered, color coded endtab casebinders. Another timesaving mechanism that would also eliminate typewriters from desks would be to computerize all of the court forms we are required to use. Currently we have only three pre-printed forms (summons. and 2 garnishments) that are pin-fed through printers which fill in computer generated information. Updating of existing computer software and creation of new software would first have to be accomplished to meet this important objective. We are meeting this task head-on, recognizing the advantages that better technology can give us to increase the quality of our service.

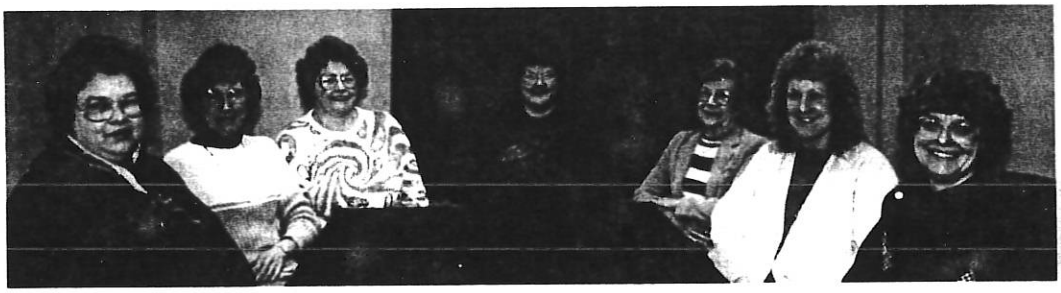
25. DISTRICT COURT TRUSTEE

a. The first judicial office to be computerized was the District Court Trustee. Our data processing system has been updated periodically over the years to reflect statutory changes and new regulations.

(l-r) Donald C. Amrein, Elie McKinley, Joanne Sorenson and Ruth Pfeifer

The software of that office is now being completely converted to incorporate the most recent advancement in computer technology. This will be fully implemented in 1990. If it were not for the computer technology, collections of the present magnitude would be difficult, if not impossible, to process.

The support funds distributed from 1972 to 1987 reflect the importance of the office to all concerned. In 1973, the sum of money collected, disbursed and enforced was 1.5 million dollars. In 1988, the figure had grown to 24.5 million dollars. Twenty-seven million dollars is projected for 1989.



(l-r) Susan Brooks, Kay Hoffman, Janet Jobe, Kathy Wade, Doris Ward, Joni McCoy and Joyce Harding

The Trustee began operation in 1972. The fee to defray expenditures has not changed from two percent since that date. Federal financial participation via cost reimbursements and incentives funneled through S.R.S. contributes about 50% of the operating budget expenditures. The 1989 budget for the office was $776,000 and the approved budget for 1990 is $1,025,000. Even so, the office remains self-supporting. In fact, your judges have reduced the amount of the fee from 2% to 1.5% effective January 1, 1990. Furthermore, a lid on the total of the 1.5% fee that can be collected from any given account during each calendar year has been set. This maximum is $11.25 per month, 1.5% of $750.00 a month.

The court policy is that all support be paid through the Trustee from the beginning of the case. If, for good cause shown, support is ordered paid direct between the parties, the case should not later be assigned to the Trustee when difficulties in payments arise, as they usually do.

(l-r) Pauline Duck, Virginia Sweet, Margaret King, Mary Scott, Mike Gardner, Beverly Ingram, Ruth Medlin, Virginia Taylor and Diana Linder.
Dinah Medina (absent)

The United States Congress enacted laws in 1984 that substantially enhanced child support enforcement. In earlier State of the Judiciary messages, I have reviewed those amendments and their mandates. It would service no useful purpose to restate all of them in this report. However, the Kansas Supreme Court has now adopted support guidelines for use in all the Judicial District in the State. We have Hearing Officers in place now in the Tenth District pursuant to Supreme Court Rule 172. The judiciary system in Johnson County is being well served by such improvements and innovations.

The income withholding law is the wave of the future. The employer is ordered to withhold support, including arrearages, from the pay check of the obligor and send such sums directly to the Trustee. All child support cases have the benefit of this legislation and will be worked into this part of the Trustee system as staff time permits. New legislation has just recently been signed by the President to greatly expand the application of income withholding.

Also, the United States Congress has now extended all other federal collection and enforcement techniques to every child support case regardless of welfare status. An obligee need only apply for IV-D status pursuant to the Social Security Act. There is no cost or fee for the obligee.

The two part-time Hearing Officers have jurisdiction in matters of establishment, modification and enforcement of support, all of which are decided at the expedited hearings. On motion, orders of a Hearing Officer are subject to review by a District Judge de novo. These expedited hearings have freed up a great deal of formal court time and moves litigants quickly in the Court System and processes. The Hearing Officer expenditures are funded by the Trustee budget.

On January 3, 1990, the Office of Court Trustee officially took charge of its new facilities on the 4th floor of the Johnson County Courthouse, in space formerly occupied by the County Jail.

Peggy A. Elliott, District Court Trustee

Peggy A. Elliott was sworn in as the new District Court Trustee on Wednesday, January 3, 1990. Mrs. Elliott replaces Mr. Amerin who retired after 18 years as the Johnson County District Court Trustee.

After teaching a few years, Peggy joined the office in a secretarial capacity. Upon receiving her law degree, Peggy became employed by the Shawnee County District Court Trustee's Office and served as the Office Manager/Attorney and part-time hearing officer. She later joined this office as a full time attorney.

She has a deep interest in this field and will be an excellent Trustee.

26. ADMINISTRATIVE ASSISTANTS

By Karen Kipf, AA

There are eighteen administrative assistant employees with the Tenth Judicial District. These Administrative Assistants are non-tenured, confidential employees hired by each individual judge. Each judge relies upon an administrative assistant to perform the duties of a bailiff, administrative secretary, docketing clerk, and so forth. There are two administrative assistants in the Court Administrators Office whose responsibilities include budgeting and personnel.

TO: Senate Committee on Ways and Means

FROM: Amy E. Hackler

RE: S.B. 661

DATE: March 14, 1990

I am a third-generation Kansan who has practiced law in Olathe for over ten years, concentrating in the family law field. Approximately 75% of my practice involves divorced or divorcing families. I frequently represent clients in matters regarding child support payments. I represent both men and women, recipients and payers of support, and on occasion represent children by Court appointment.

I am very concerned about the implications of adopting S.B. 661 and am here to speak in opposition of it. This bill is not in the best interests of the children of Kansas.

The problems I find with this legislation are many, but today I want to emphasize three problems from the viewpoint of a practicing attorney and as a children's advocate.

1. Accessibility of Support Payment Records. Presently support payment records are maintained at your local courthouse. They are easily obtained by attorneys and the men and women paying and receiving child support payments. As a practical matter I can call my Court Trustee's office and in as short a time as ten minutes have a computer printout of the support payment history accurate to that date. If S.B. 661 was enacted, I foresee long delays and added expense to the individuals involved in obtaining support payment histories. A written request would most likely

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have to go to SRS. They in turn would contact the fiscal agent, who then delivers the record to SRS, who in turn forwards the information to the requestor. Easily this could become a several day or week process - frustrating and expensive for individuals, bench and bar. Children rely upon these support payments to pay for their food, clothing and shelter. The support payments received should not be eroded by the additional administrative costs and legal fees generated by this process. In addition, the information received would not be as current or reliable as we now have. Typically, in support litigation, a delinquent obligor will pay the day of or immediately before a Court appearance. This payment information would not be reflected in the record at the time of the Court appearance. The process could contribute to inconsistent information contained in the local Court records and the payment center records.

2. Practical Problems in Getting Support Records into Evidence. Support payment records when maintained by the district court trustee or clerk of the district court are admissible as official payment records of the Court on their own. No one from those offices is required to bring the record to Court and testify in order to put the support records into evidence. However, if S.B. 661 is enacted and the fiscal agent's support record is contested or inconsistent with the Court's records (which may occur quite often in this acrimonious environment) in order to put the support payment records into evidence, we would have to have subpoenas issued to compel a custodian of the records to appear in Court and testify as to the support payments. Child support litigation occurs daily in most of our courts. This impediment

would be unduly expensive and burdensome to litigants and would tend to chill child support enforcement efforts.

3. Cost to be borne by our children. The fees to defray the costs of this program will fall unfairly upon the backs of the children. Children are dependent upon these child support payments to meet their basic needs. S.B. 661 leaves most of the rule and regulation making to the Secretary. It provides no assurance that our children would receive their support payments quickly or without substantial expense to the children. The proposed statutory ceiling on the fiscal agent's fees is 115% of the cost of the support payment center. The proposed legislation does not state who receives any funds earned over 115% of the cost of the operation nor does it limit the length of time the fiscal agent has to hold the funds to generate a return on the float.

The Johnson County Court Trustee's office is well run, responsive and facilitates quick receipt of child support payments by the families dependent upon support payments. I would urge you to consider this office as a model for establishing local child support payment centers.

Respectfully submitted,

Amy E. Hackler

Amy E. Hackler, KS SC #10323

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Department of Social and Rehabilitation Services

Winston Barton, Secretary

Statement regarding H.B. 2469

Before the Senate Judiciary Committee

March 15, 1990

Title:

An act concerning enforcement of support; relating to income withholding.

Purpose:

To enhance the effectiveness of income withholding as a child support enforcement remedy and to comply with federal mandates in the Family Support Act of 1988 that all states enact immediate income withholding provisions before November 1, 1990.

Background:

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. The Child Support Enforcement Program is federally funded under the provisions of Title IV-D of the federal Social Security Act.

The current Kansas Income Withholding Act requires the court to issue an income withholding order for child support only if the obligor fails to pay the equivalent of one month's support. The court may, in its discretion, order immediate income withholding at the time a support order is entered.

The amendments in House Bill 2469 primarily involve new federal requirements. Briefly stated, the federal Family Support Act of 1988 requires the states to amend their income withholding laws before November 1, 1990, as follows:

- o Require immediate income withholding in all new or modified orders in Title IV-D cases;
- o Add provisions for avoiding mandatory immediate income withholding when the court finds good cause exists for not ordering immediate income withholding or when the parties have a written agreement for alternative arrangements; and
- o If immediate income withholding has not been ordered, make income withholding available upon accrual of one month's arrearage or, without regard to whether there is an arrearage, upon request of the obligor or obligee.

The Family Support Act also requires that mandatory immediate income withholding be extended to new orders in private cases before January 1, 1994, but that future requirement is not addressed in House Bill 2469 in its present form.

In recognition of the needs of the business community, a technical amendment has been added to H.B. 2469 at page 4, line 42, to permit an income withholding

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order to be served on the employer in ways other than by personal delivery by the sheriff. Many employers, especially small businesses, are understandably concerned about the way the public may perceive delivery by the sheriff, and this amendment is intended to address those concerns.

Other amendments to the Income Withholding Act are of a technical nature, such as adding a definition of "income withholding order," correcting an obsolete statutory reference, and clarifying mandatory procedures when the obligor files a motion to stay issuance of an income withholding order. The only substantive change not related to federal requirements would make knowingly filing a frivolous motion to stay income withholding punishable as contempt of court. This parallels an existing provision for knowingly filing a false affidavit requesting income withholding, and it is intended to insure proper use of the motion to stay process.

As it was originally introduced, House Bill 2469 would have imposed immediate income withholding whenever any child support order was entered. The House Judiciary Committee amended the bill to limit mandatory immediate income withholding to Title IV-D cases. The primary impetus for this change was concern for the impact such a broad change would have upon the business community and recognition that mandatory immediate income withholding in private cases is not required until 1994.

We recognize that any law which requires wage deductions to satisfy debts or taxes places a burden on employers, nevertheless, we recommended immediate income withholding in all cases because the Family Support Act will eventually require require it and because all children deserve and need the protection that immediate income withholding can provide.

Past experience with the Income Withholding Act has shown that an employer's paperwork associated with income withholding is far less burdensome than that required by garnishments. Under a garnishment, the amount withheld from each paycheck changes every time the net pay changes, whereas under income withholding a uniform installment is deducted in nearly all cases. Under garnishment, a new answer form must be completed and notarized every month, but under an income withholding order a new answer is needed only if the terms of the withholding order change. Typically, that happens only when the underlying support order is modified or when past due support is paid off.

Under existing law, employers are entitled to deduct a fee for every income withholding order they handle, to help cover costs -- something that is not available under the garnishment laws. The fee currently authorized by the Income Withholding Act is five dollars per withholding, up to a maximum of ten dollars per month.

To further minimize the costs to employers, federal and state law currently permit the employer to combine amounts payable to one district court on more than one order into a single check, so long as the amounts for each court order are clearly identified. Also, employers have ten days from the payroll date to get the money into court, so that employers with weekly payrolls may combine two weeks' worth of deductions into one check. Large employers and those which utilize payroll services are able to take advantage of computer programming to implement regular, uniform payroll deductions for income withholding.

In addition, SRS has had a toll-free income withholding hotline available since 1986 to assist employers, especially small businesses, to implement income withholding and to answer questions. Several hundred employers each year take advantage of this service and have expressed their appreciation for it. We all recognize that the cooperation of the business community is crucial to the effectiveness of income withholding, and the fee option and hotline are just two ways Kansas tries to minimize the inconvenience and expense of income withholding for employers.

Eight states have already taken the initiative in implementing immediate income withholding laws, some over ten years ago. Those states are Illinois, Massachusetts, Minnesota, Ohio, Texas, Virginia, and Wisconsin. Their experience shows that immediate income withholding carries substantial benefits for children.

Effect of Passage:

House Bill 2469, in its present form, would not change existing law with respect to cases not being administered by the Child Support Enforcement cases, i.e., private cases. In Title IV-D cases, the amendment would require issuance of an income withholding order whenever the support order is established or modified, except in cases in which the parties have a written agreement to alternative arrangements or in which the court finds that good cause exists for not ordering immediate income withholding.

The potential fiscal impact of this legislation is significant. Enactment of mandatory immediate income withholding in Title IV-D cases is expected to have a positive impact of more than $572,820 per year because it would decrease the expenses now incurred for establishment of income withholding orders, increase overall support collections by insuring prompt and full payment of support, and help prevent expenditures for public assistance caused by lack of support. In addition, agency resources now devoted to obtaining income withholding orders would be made available for other revenue-producing tasks.

If Kansas does not have the required legislation in place before November 1, 1990, the state may be subjected to significant and escalating federal sanctions. Based upon 1989 figures, the penalties could range from $558,000 to $63,980,000 per year, including immediate cessation of funding for the Title IV-D Program.

Agency Recommendation:

SRS strongly supports passage of House Bill 2469.

Family Support Act of 1988

STATUTORY LANGUAGE

TITLE I—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

Subtitle A—Child Support

SEC. 101. IMMEDIATE INCOME WITHHOLDING.

(a) IN GENERAL.—Section 466(b)(3) of the Social Security Act is amended to read as follows:

"(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

"(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

"(i) the date as of which the absent parent requests that such withholding begin,

"(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

"(iii) such earlier date as the State may select.".

(b) APPLICATION TO ALL CHILD SUPPORT ORDERS.—Section 466(a)(8) of such Act is amended—

(1) by inserting "(A)" before "Procedures";

(2) by striking "which are issued or modified in the State" and inserting in lieu thereof "not described in subparagraph (B)"; and

(3) by adding at the end the following new subparagraph:

"(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

"(i) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

"(ii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

"(iii) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.".

(c) STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

(d) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall become effective on January 1, 1994.

(3) Subsection (c) shall become effective on the date of the enactment of this Act.

Test ıy presented before the Senate Judiciary Sub-Committee on Probate and Civil Procedures on House Bill 2469 by Charles V. Cook

I am a father, a husband, a 25 year employee of my company and I attend church every Sunday with my family. I served in the armed forces during the Viet Nam conflict, coached childrens athletics and have devoted many long hours to charitable organizations.

I am not a criminal nor am I one who attempts to use the law only to his advantage. I make no attempt to distort the truth or to escape my just committments nor do I support those who do.

I do however, oppose strenuously, House Bill 2469 before this sub-committee today. Due to work committments I was unable to testify before the House committee when they heard testimony on this bill and I thank this committee for allowing me to state my views.

Due to some of lifes' often hard to understand circumstances I find myself paying in excess of 50% of my take home salary in maintenance and child support (most of it in maintenance). I question the validity and often excessive assessment of maintenance, but I do believe that payment of child support is critical and a responsibility that cannot be taken lightly. However, it is not my views on child support and maintenance that is paramount here today but the lack of conscience found in this piece of legislation. House Bill 2469 deprives me and thousands of other fathers like me of not only a sense of pride and respectability, but characterizes us as a group of dead beats whose sole goal in life is

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to beat the system and deprive our children of all visable means of support. This bill not only assumes the guilt of we the obligors, but provides free legal service to the obligees. Even more disturbing is that this bill assumes ethical handling and accuracy of accounting records maintained by the Court or the Court Trustees who most often are attorneys, not accountants.

In the last two years I have appeared in District Court in Shawnee County on three occassions as a result of inaccuracies in the Court Trustees records and am presently attempting to recover an overpayment of one months maintenance and support paid as a result of an "Administrative Rule" being invoked after the sale of my home in September of 1989. In addition, during this time the Court Trustee has made three documented errors in calculations and percentages resulting in my incurring significant additional legal costs. Also, the Court Trustee on two separate occassions has changed my residential address to my place of employment, which significantly delays correspondence and causes personal embarrassment through my receiving mail from the District Court at my place of employment. If you were to look at my record in the Court Trustees office today you could only assume that I live at the Santa Fe Railway. When questioning the District Court Trustee as to the reason for the change I was told "We are attorneys and as attorneys we have the discretion to make decisions in concert with private attorneys." When asked if the decision was made to change my address in concert with my opposing attorney the reply was "I won't answer that question".

Senators I ask, am I alone? Am I the only person being victimized by the adminstrative and record keeping function of the court? I doubt it. I suggest there are hundreds of others who are less willing than I to hold these people accountable for their errors, inaccuracies and unethical conduct. Yet House Bill 2469 gives total credibility to these "Court Record Keepers" and places both the mental and financial burden of proving these records in error on the already overtaxed obligor.

It is no secret that if a vindictive ex-spouse or attorney chooses, they can place a call to the court and fabricate a false arrearage. This call starts the machinery and causes the obligor to obtain legal representation in defense of the false accusation. The reality here is that this bill makes the obilgor guilty until proven innocent. As I recall, it's suppose to be the other way around.

There is no mechanism in place for me to place a call and obtain immediate free legal representation because my visitation and communication rights with my children have been violated.I can't call the Court Trustee because my children are not being fed or clothed properly and expect immediate free legal action. Nor can I obtain free government representation to recover the overpayment I have made to the Court Trustee.

I understand certain Federal subsidies are contingent on the passage of this legislation and somehow I can rationalize your need to press for passage. However, I submit to you that simply because Federal

subsidies are involved is no reason to violate the rights of the citizens of this great State. As you are aware state law allows for the collection of as much as 6% of the maintenance and child support due as a collection surcharge. As you may also be aware, here in Shawnee County after implementing only a portion of the cases it services has shown a profit of nearly $80,000.00 per year for the years 1987 thru 1989. As Shawnee County collected over $9,000,000.00 in child support and alimony in 1989 the 4% collection surcharge will eventually reach $360,000.00 annually. In addition, the investment interest on the monies collected also results in a significant profit that is not reflected in the Court Trustees balance sheet. Obviously the Federal funds we are seeking will do nothing more than pad the already profitable Court Trustee system.

The economic class a person falls into makes little difference, this type of legislation is unjust and provides for serious legal ramifications contingent upon, at best, highly questionable accounting records and practices. Combine this with a governmental entity operating on a for profit basis and one would wonder why this bill was ever introduced.

I suggest that before any legislation on this issue is passed, adequate controls and regulations should be in place making the District Court Trustee accountable for its records and that all surcharges be removed eliminating the profitablity of the system.

In view of the many questions that surround this issue I cannot in good concsience support the Bill before you today. I urge each of you to oppose House Bill 2469 and not sell out the citizens of this great state for thirty pieces of silver.

Legislative Testamony
For HB 2469
SB 74
SB 546

By: Greg Patton LMHT, AA

I represent Parents Wanting Equal Custody and am all so ~~speck~~ speking for Families Demanding Equal Justice, Inc.

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Atomatic assumes someone will not pay

As Parents of children whom we love we find that HB 2469 will do nothing to help Children. It requires mandatory wage with holding on all child support orders entered after Jan 1, 1990 The cost to a persons employer and the Court Trustee's take (as much as 5% of the child support, yes this is a tax on child support. Takes away from children

However we would not oppose this bill if we can attach SB 94 and SB 546. SB 94 is a good fair approach to child support which the Supreme Court has yet not came up with an answer which was past last year by 1866 resolution that Child support guidlines would be mandated by now.

SB 546 is Equal residence were both parents desire time with their children can have that time adviable. So bills being attached to this bill would help our children by providing finaces that are advaible to both parents for their Children and time for both parents to be with their children. Children need both parents and when both parents are fit parents they certainly should be allowed to continue to be parents.

In the public hears provided by the Supreme Court many testified that the Child support guidlines wee unfair SB 94 is fair and can be solution to these guidlines.

I am disapointed that SB 546 did not get a hearing I wish you would take a look at this bill which is a benifit to children this issue of equality is one that will not go away.

6-7/14

Touch key aspects

read when you wish too I. Read

1. Joint Custody

2. Amendment to K.S.A. 60-1610

3. Saund research shows the benefits of joint-custody and the importance of two parents' involvement in the lives of children of divorce

4. Reasons for establishing the amendment result from the following findings. Three previous amendments, Legislative Division of Post Audit, 6 (1987) Entering the court room the natural father has one chance in 10 of obtaining primary custody and one chance in 20 of Sharing their care equally

5. Over whelming disadvantage - position of appellate court Gardner V. Gardner, 192 K, 529 (1964)

6. The intent of the legislature to give both parents equal standing is not met.

7. Order of Joint Custody, five types guidline for Parents & Judges

8. Visitational interference law Civil, Washington

9. Conclusion

Exibits

10. Work shop will be mandatory
11. 11th Judicial District Parenting in Divorce
12. Letter 11th district Administrative Judge
13. Administrative Order No. 92
14. Visitation Bill Passes - Washington State

6-3/14

JOINT CUSTODY

Legal language addressed in SB 73

The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best interests of the child under their custody.

1. Absent a specific finding of unfitness of one or both parents, when both parents desire residential custody of a child the court shall further determine that the residency of the child shall be divided in an equal manner with regard to time of residency.

2. When both parents do not desire residential custody of a child, the court may further determine that the manner with regard to time of residency or on the basis of a primary residency arrangement for the child. Absent a specific finding of unfitness of the non-residential custodian said primary residency shall be subject to reasonable visitation rights of said non-residential custodian.

one equal basis

Shall

3. The court, ~~in its discretion, may~~ require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

4. The support of the child will be determined on the ability of both parents to contribute as specified by the child support guidelines.

5. **No parent will be determined unfit unless convicted of sexual misconduct with the child, abuse of the child, or neglect.**

pg. 7 (7)

6. Orders of more frequent and continuous contact with child will be ordered when the child remains within the same school throughout the year.

(8)

Work Shop

(9)

6- 4/14

2. Proposed Amendment to K. S. A. 60-1610

Amendment of K. S. A. 60-1610 should be amended to clearly define joint custody as equal physical and legal responsibility of children.

3. We feel the only way both parents can be assured significant time with their children rather than a superficial relationship is to make this amendment .

We feel that children need to spend enough nurturing time with both parents. If children lose contact with one parent, they experience great pain and a feeling or rejection, even if they do not express this outwardly. Many children find it difficult to trust and forgive a parent who left them. The hurt brought about by the loss of a parent can remain with the children throughout their lives and may keep them from being willing to love and trust others. Children are often hurt more by infrequent contact with one parent than by the inconvenience of going back and forth. They get used to living in two homes when parents cooperate and there are not continual conflicts between parents. (Assn. of Family and Conciliation Courts)

Parent-child relationships develop through ongoing contact. Infants and young children tend to feel closest to those who take care of them physically; feed them, change their diapers, hold them, comfort them, cuddle them and do things for them and with them on a regular basis. Building a relationship with young children entails frequent hands-on contact. An ongoing relationship builds from this. For many divorced parents, trying to build a close relationship with their children is more than difficult; it is next to impossible. In traditional sole-custody arrangements, the child usually sees the non-custodial parent on alternate weekends, just 2 days every other week. With a 2-week spread between visits it is difficult to build a close relationship with children. In joint-custody arrangements both parents have a better chance.

What do children who are not seen by a parent tend to experience? Children do not understand adult problems; therefore, when they lose contact with a

parent for whatever reason, they tend to feel unloved, rejected and abandoned by that parent. Even if they never speak of that parent, deep inside these children tend to feel unloved and unworthy. The unconscious sequence goes something like this: "If my daddy (or mother) loved me, he would want to see me. Since he doesn't see me it must be because he doesn't love me, and the reason must be because I'm not worth loving. The self-image and self-esteem of such children tend to be low.

This is not all. A time-bomb ticks away unnoticed waiting to explode when they grow. In adulthood it is not uncommon for such children to pair with rejecting individuals. Unconsciously they desire to repeat the scenario with the "missing"/"rejecting" parent over again, this time hoping to effect a happy ending. The happy ending rarely comes, and a legacy of unhappiness is often passed on to the next generation through their children.

Having one loving parent and even adding a loving step-parent helps, but one can never squelch the pain of loss completely nor erase the feelings of rejection. The "missing" parent remains and entity for the child throughout life, even if never spoken about. Similar principles operate for adopted children who in spite of exceptional loving, doubting parents struggle with the question, "Why was I given up?"

One main advantage of joint custody is that it encourages both parents to participate and be involved, and gives both parents the opportunity for building a close relationship.

Findings in a study conducted by Deborah Ann Leupnitz, Ph.D. shows that 55% of single-custody parents returned to court at least once over money or visitation issues, while none of the joint custody parents did so in spite of disagreements. Dr. Lepnitz's study also shows that joint-custody fathers supported their children reliably, that children whose parents shared custody were pleased and comfortable with the arrangement, and that joint custody parents did not feel over whelmed by pressures of raising a child alone as the single-custody parents did. Preliminary findings in a study conducted by Marianne Weil of Los Angeles City Schools bears out the Leupnitz study, in terms of parent and child satisfaction with joint-custody parenting arrangements.

In an age when most mothers and fathers both work, men and women are on a more equal footing insofar as availability to be with the children is concerned. The

women's liberation movement has freed women to become more assertive and to compete for jobs in the marketplace, and has also freed men to become more sensitive, nurturing parents. Now it's okay for men to cry and take care of children. Ever growing numbers of fathers are now seeking the right to participate more actively in raising their children. This benefits children and should be encouraged. Even in cases in which fathers participated little in child rearing during the marriage, in the child's interests, expanded participation and contact should be encouraged after separation and divorce.

A legislative presumption favoring joint-custody in the courts is more important for the following reasons: This presumption can help give parents the perspective that children are not property, that parents are expected to share, that children have the right to have two parents after divorce, and that both parents have legal rights to remain full parents after divorce; unless it can be proven detrimental for the child.

There are two legal terms connected with joint-custody: "joint legal custody" and "joint physical custody." Joint legal custody means that both parents have an equal say in major decisions regarding their children's health, education, and general welfare. For example, both parents have the right to go to their children's schools, speak to their children's teachers, receive progress reports, and to attend parent-teacher conferences, school open houses and special activities at which parents are permitted. Both parents also have the right to obtain emergency medical treatment for their children at hospitals, speak with their children's doctors and dentists, obtain information and medical records, request additional medical consultations, and so on.

Joint physical custody means that each parent takes a turn in sharing responsibility for his or her child's care. A parenting plan is worked out, which states when each parent is responsible for his or her child. A child then has two homes and lives with the mother part of the time and with the father part of the time. There are many kinds of joint-custody plans from which to choose. The particular plan that parents select should make sense for each child, and adjustments should be made as needed to meet the changing needs of the child.

Reasons for establishing the amendment result from the following findings.

In 1976, the tender years doctrine was abolished by amendment of K.S. A. 60-1610 to read "neither parent shall be considered to have a vested interest in custody of any such child." Despite the intent of the

legislature to abolish the presumption in favor of the mother, the courts continued to construe the statute in a way to continue to give preference to the mother. Thus the courts would assert that the real issue is which parent will do a better job, but that the mother is usually better by nature. Patton vs. Patton, 215 K. 377 (1980); The Tender Years Doctrine in Kansas Child Custody Cases, 49 J. K. B. A. 23 (1980).

In response to courts interpretation the legislature in 1980 again amended K. S. A. 60-1610 to add "and there shall be no presumption that it is in the best interest of an infant or young child to give custody to the mother", effectively over ruling the decision in Patton, supra and firmly establishing equal treatment of both parents as the standard to be applied in determining child custody. The statute was further modified in 1986 to clarify equal treatement for primary residency as well.

By repeated amendments the legislature has, in spite of judicial reluctance, insisted that both parents must be treated equally in child custody cases. Nevertheless, the district courts have again chosen to ignore the legilature's clear intent and maintain a prejudice against the father regarding child custody. Under the law as currently amended, the mother is awarded primary residency or sole custody in 81.7% of all cases. In 5.4% of the cases, residency is shared equally between the parties. "Child Custody Determinations in Kansas Divorce Cases" Performance Audit Report by the Legislative Division of Post Audit, 6 (1987). Entering the court room the natural father has one chance in 10 of obtaining primary custody of his children and only one chance in twenty of sharing their care equally with the mother.

5. This overwhelming disadvantage is compounded by the postion of appellate courts that absent abuse of discretion, the appellate court will not disturb the ruling of the trial court. Gardner v. Gardner, 192 K. 529 (1964)

6. The intent of the legislature in giving both parents equal standing regarding child custody is not met when the ratio of awards runs 8 to 1 in favor of the mother. Such legislative intent is being actively and consistantly subverted at the trial court level. In order for the intent of the people of Kansas, as voiced through the legislature in the statutes, to be implemented in practice it is necessary to amend K. S. A. 60-1610 to clearly define joint custody as equal physical residency of the children which is in the best interest of children.

7.

ORDER OF JOINT CUSTODY

If there are no proven allegation by either parent that the other is unfit. If there is no evidence of improper sexual conduct or that the child care provided by either parent for the child while absent is inadequate. That both parents are fit parents genuinely interested in their child but, can not agree on a joint custody plan, the court will order the custody of the child or children to be equal in physical residency or a minimal time of four months residency a year, if parents live over 30 miles a part. with non custodial parent

Five types of custody can be ordered by the court and these five ones will be chosen by the descretion of the court.

(WHEN THE CHILD REMAINS IN THE SAME SCHOOL) or pre school age)

1. One week with parent A, one week with parent B alternating throughout the year.

2. 3 days with parent A., 4 days with parent B. then 4 days with parent a. and 3 days with parent B. alternating throughout the year.

(WHEN CHILD IS PRE-SCHOOL AGE) if parents live a great distance apart,

3. 6 months with parent A, 6 months with parent B, with visitation of parent B during parent A's 6 months and visitation of parent A during parent B's 6 months, alternating every 6 months. The minimum parental contact schedule will be followed during the 6 months by the parent not having the child in residency during the 6 months. Minimum visitation will consist of every other weekend overnight per week during the week. Holiday odd months with parent A and holidays even months with parent B alternating each year.

4. Residency being alternated each year from parent a to parent B with the minimum parenting schedule followed which would include 3 months summer visitation by the parent not having residency that year.

5. When the child is school age, the child will remain in the same school. 5(a) if parents live over 30 miles apart, one parent will have summer months and minimal 8 to 10 overnights per month.

8.

To be attached is a visitational interference law to be applied. Passed in the state of Washington. This law provides that upon the findings of contempt the court shall: 1989

1. Require make up visitation time.

2. Require the party not obeying the visitation order to pay the non-custodial parent all court costs and reasonable attorney fees; and

3. Require the parent to pay the non-custodial parent a civil penalty of not less that $100.00 "residential order" "parenting plan" instead of visitation, visitation implies that a father is only a visitor." The law provides that the court may jail the parent who violates visitaton for up to 180 days! Additionally, the law provides more penalities upon a second finding of contempt with a 3 year period. The visitation makeup time is doubled and civil penalties minimum is increased to $250.00.

(7)

9.

Conclusion

The legislature of this state has, since 1976, attempted to establish the father and mother on equal footing regarding child custody. The courts have been resistant to such a policy each step of the way, requiring the legislature to amend the statutes again and again to eliminate improper interpretation of the law. Even after said repeated amendments the trial courts in practice continue to show bias in favor of the mother in a ratio of 8 to 1. It is statistically clear that the trial courts have consistantly ignored the legislative mandate in this regards and it is unlikely that a father will obtain a fair hearing at the trial court level on the issue of child custody. A more clearly defined amendment to K. S. A. 60-1610 must be implemented to ensure substantial due process. Joint custody must be defined as equal physical residency and legal responsibility of both parents over their children.

This ideal model will help keep parents out of the court room and help them maintain an ability to communicate that is not lessoned by the resentment of the court room. This model will be included with classes on shared budgeting for child care needs and lessons from a trained mental health counselor on how to maintain a business like relationship with the other parent.

VIII (10.8) VII

13 dist 30

A workshop will be mandatory for all divorce cases involving children or custody of past decree cases. Any continued conflict between parents brought before the court will result in mandatory counseling with trained mental health counselors until parents can resolve the conflict.

Many custody cases are uncontested because attornies representing fathers advise their clients that they have no chance of obtaining custody and in that respect the audit statistics are true and accurate.

Sole custod residency — Legal joint custody

my = 2wk 2dys

days off m:J wk

baby sitter for weekends

6- 10/14

11.

ELEVENTH JUDICIAL DISTRICT

PARENTING IN DIVORCE

The goal of this program is to reduce the necessity for divorcing parents to turn to the court for decision making in parental matters, by encouraging appropriate parenting communication and by stressing the importance of parental involvement once the marriage ends. This class will assist divorcing parents to bridge communication gaps, to understand the grief process for themselves and their children, and discourage destructive communication, a natural reaction to losses felt in divorce, that is so damaging to children "caught in the middle".

The key concept is to encourage parents to develop businesslike relationships with one another, in order that they may create their own continuous childrearing plan, involving both parents, instead of leaving important child-rearing decisions for the court.

This class will provide educational information about:

1. Common feelings and reactions that children experience and the grief process for adults and other children in divorce;

2. How to continue a parental relationship after the marital relationship ends;

3. How to avoid putting children in the middle of destructive games such as "I spy", "cut down", "messenger game", etc.;

4. The need for divorcing parents to develop time-sharing plans for their children after marital separation and divorce and;

5. The importance of divorcing parents keeping in control of their lives by making responsible and considerate parenting decisions on their own and not relying on the court to do that for them.

9.

DISTRICT COURT

12.

Eleventh Judicial District, Division II
Cherokee County Courthouse
Columbus, Kansas 66725

DAVID F. BREWSTER
Judge

Telephone
(316) 429-3518

May 3, 1989

Dear Member of the Bar:

As you are all aware, children are the most negatively affected persons when their parents divorce. Children seem to suffer the most in bitter divorces. The judges of the Eleventh Judicial District believe that more can be done to help.

In answer to that concern, the Eleventh District will begin a new program, by administrative order, in Crawford County, beginning July 1, 1989. The program will take the form of a mandatory education class for all parents with minor children who have filed for divorce.

In order to explain the program and the new procedures, the Eleventh District will sponsor a three-hour workshop for lawyers. Approval for continuing legal education hours is expected soon.

The workshop is scheduled for Friday, June 23, 1989, from 9:00 a.m. to 12:00 noon, at the Pittsburg Memorial Auditorium. Further information will be mailed to each of you within the next two weeks.

The judges of this district consider this an important project, and value your support and suggestions. Therefore, we encourage each of you to attend this seminar, and hope you will be able to free your calendars on June 23rd.

Very truly yours,

David F. Brewster
Administrative Judge

DFB/lfl

6-12/14

13. 10.

IN THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF KANSAS

Administrative Order No. 92

On and after July 1, 1989, the parents of minor children who are parties to an action for divorce, annulment or separate maintenance in Crawford County are hereby required to attend and complete an education seminar, certified by the administrative judge of the Eleventh Judicial District, concerning the emotional and psychological affect of the termination of marriages on minor children. This order shall further apply to all post-decree motions filed by any party seeking modification of custody and/or visitation arrangements.

The seminar must be completed by both parents prior to trial or final hearing, unless attendance is excused by the presiding judge for good cause shown.

The presiding judge in such cases shall take appropriate action to insure compliance with this order.

IT IS SO ORDERED this 3rd day of May, 1989.

David J. Brewster

Administrative Judge
Eleventh Judicial District

6-13/14

Visitation Bill Passes

A father's right to parent his child is a constitutional right most often abridged by state courts unwilling to enforce "visitation" orders. An innovative law enacted in Washington state may become the model for the nation.

By Dick Woods

The Washington state legislature has passed and the Governor has signed into law an innovative visitation enforcement bill -- probably the strongest visitation enforcement bill in the United States.

The law uses the terminology "residential order" and "parenting plan" instead of "visitation rights". Visitation implies that a father is now a "visitor" instead of a "parent". The name given to our relationship with our children is important to the perception of our relationship.

If that relationship is merely a "visit", then it sounds like a vacation or holiday, something of relatively less importance than a school or extracurricular function and about equal in importance to spending time with friends their own age. That perception also contributes to the "Disneyland dad syndrome", since fathers feel obligated to make "visits" entertaining.

However, if the time awarded to each parent by the court is part of a "residential schedule", then the time spent in the residence of each parent appears to be of equal value even if it is of different quantities.

The law goes on to set forth procedures for contempt of court and states "Upon a finding of contempt, the court shall order the noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child due to the parent's noncompliance. The court may also order: (a) The parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. the parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days; (b) The parent to pay, to the moving party all court costs and reasonable attorney fees incurred as a result of the noncompliance, and any reasonable expenses incurred locating and returning a child; (c) The parent to pay, to the moving party, a civil penalty, not to exceed the sum of three hundred dollars."

The use of the term "shall" in the first sentence is very important. Judges have frequently found mothers to be in contempt, but then declined to take any action except for a verbal reprimand. In this bill, "shall" takes away that option and requires, at minimum, that the other parent receive make-up time.

The law states that make-up time must be "equal" to the time missed due to noncompliance: not merely day-for-day, but equal in time and value.

In using the phrase, "The court may also order", this section appears to allow the court to order make-up time, plus any or all of the options.

The civil penalty of $300 in addition to court costs is permitted in some states by case law, but his is the ONLY statutory provision for a civil fine that I am aware of.

The law directly states that a more serious penalty will be used in subsequent cases of contempt: "(4) On a second failure within five years to comply with a residential provision of a court-ordered parenting plan, the county attorney shall institute a criminal contempt proceeding against the noncomplying parent." Thus, the law creates a second step in progressive discipline to bring the parent into compliance with the decree. Again the use of the word "shall" takes away the options of the county attorney.

Subsection 4 goes on to state, "On finding of contempt under this subsection, the court shall order: (a) The noncomplying parent to provide the other parent with additional time. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance; and (b) The parent to be imprisoned for not less than five and not more than one hundred eighty days. The jail sentence shall not be suspended or deferred." Thus, not only is the county attorney required to bring the charges after a second denial of visitation rights, but if the court finds that the noncomplying parent is in contempt, then the court "shall" order BOTH make-up time AND a jail term.

Continued p. 5• Visitation Law

KANSAS BAR ASSOCIATION
A SECOND CENTURY OF SERVICE
1882

HB 2643
March 15, 1990

Ad Damnum Clause

Mr. Chairman, members of the Senate Judiciary committee. I am Ron Smith. I represent the Kansas Bar Association.

The 1976 Kansas legislature enacted an ad damnum clause as part of its response to the first medical malpractice crisis. It basically states that if the claim for damages exceeds $10,000 then the plaintiff's first prayer for relief cannot state a specific amount being sought but must plead the amount generally: e.g. "in an amount exceeding $10,000.00."

Although $10,000 seems like an arbitrary number, it happened to correspond to the federal diversity jurisdiction amount, although it was not planned that way.1/

Effective last May, the Congress increased the removal amount to $50,000. The question then becomes whether to change the Kansas ad damnum clause to $50,000 to correspond with the federal change.

One reason for doing so would be to avoid an unnecessary interrogatory. A defendant being sued "for an amount exceeding $10,000" doesn't know whether the amount is over or under $50,000 unless after answering the petition, the defendant asks for an interrogatory stating the amount in controversy.2/ Only upon answer of this interrogatory does defendant know whether to consider removing the case to federal court.

---

[1]Prior to May, 1988, even if litigants were residents of two different states, which ordinarily invokes federal court jurisdiction, unless the amount in controversy was at least $10,000, the plaintiff must file the action in an appropriate state court.

[2]Called a Rule 118 statement.

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

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However, this creates a Catch 22 for the defendant. If defendant cannot request and get a rule 118 statement answered before the running of the time for filing an answer in state court, then federal rules of civil procedure do not allow removal from state court to the federal court regardless of the amount in controversey. Thus the ad damnun clause penalizes defendants unless it is identical with the federal jurisdiction amount.3/

HB 2643 makes the state's ad damnum clause identical to the federal jurisdictional amount. KBA supports HB 2643.

---

[3]Among KBA members there is support for repealing the state's ad damnum clause altogether, since a case filed in federal court to begin with does not have to include a similar statement. However, our Board of Governors adopted this policy of making the ad damnum clause equal to the federal jurisdictional amount.

KANSAS
TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before
SENATE JUDICIARY COMMITTEE

March 15, 1990

HB 2688 - FEES IN AUTO DAMAGE CASES

Mr. Chairman and members of the Judiciary Committee, my name is Mark Works. I am an attorney in private practice here in Topeka. I am today speaking on behalf of the Kansas Trial Lawyers Association, of which I am a member.

K.S.A. 60-2006 provides for recovery of reasonable attorney fees to the prevailing party in auto negligence cases and was last amended eight years ago. Inflationary trends have pushed car values up and up, making the $3,000 damage limit for recovery of attorney fees too low to be economically feasible for many attorneys to handle a contested case. This law has served to encourage settlement of smaller cases and benefits a large group of the population by returning transportation to them in a prompt manner. The statute in its present form works well and in order to keep up with inflationary trends in the auto market, the damage limit should be increased to $10,000.

HB 2688 should be of equal interest to automobile insurors. They have the same rights to make use of this statute and may also benefit by the likelihood of recovery from the party at fault through subrogation.

This proposal was unopposed in the House Judiciary Committee and passed the full House by a vote of 120-2.

We believe this bill will help many Kansans receive their proper insurance claims and encourage you to act favorably on it. I appreciate the opportunity to come before this Committee and would be pleased to respond to any questions you may have.

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STATE OF KANSAS

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TESTIMONY OF
ASSISTANT ATTORNEY GENERAL D. JEANNE KUTZLEY
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
TO THE SENATE SUB-COMMITTEE ON PROBATE AND CIVIL PROCEDURES

RE: H. B. 2690

March 15, 1990

Mister Chairman and Members of the Committee:

Attorney General Stephan offers this bill as clean up on the Charitable Organizations & Solicitations Act enacted last year. These changes are all the result of specific issues raised by organizations and our office in the course of enforcement.

I will address the changes in the order of the bill.

SECTION 1. Clarifies some of the exempt organizations. We received phone calls from some political groups. The present act is not very clear. It was not the intent to include them originally.

Humane purposes was added because the "charitable purpose" definition would have to be read very broadly to include these organizations. The present language appears to apply to "persons" only. Animal charities may not be included, therefore, might not be regulated. There are several which solicit in Kansas.

New language was added to the definition of fund raiser. The new definition includes some language from the National Association of Attorneys General Model Act. At least one fund

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raiser has tried to raise the defense that they are not fund raisers because they do not "handle" the actual funds raised. This definition would clearly include them.

SECTION 2. Under the present act the bond runs to the Secretary of State. In at least one instance where we collected on the bond, we had some difficulties getting the bond money to the damaged donors. This was because the Secretary of State's Office was not set up to pay this money out. If the payee were the State of Kansas, the bond money could be paid into the Attorney General's Office and paid to consumers from there. We do have this mechanism since we regularly pay out funds from judgments on consumer cases.

SECTIONS 3 and 4. These changes will allow county and district attorneys to prosecute cases. This was an apparent oversight in the original legislation.

The present act does state in the civil penalties section that county and district attorneys may sue for and collect investigative fees and expenses and describes how civil penalties collected by county and district attorneys are to be distributed. However, the county and district attorneys are not mentioned in the actual enforcement sections. This change would clear up that issue.

SECTION 5. Originally, this section referred to the Kansas Consumer Protection Act for the description of deceptive and unconscionable acts. When the present act was passed, this seemed easy enough. However, in reality only a few sections apply to charitable organizations. Also, if an interpretation questions

arose, the judge or jury might try to apply a consumer transaction standard to a charities question. This change includes the specific deceptive and unconscionable sections which apply to charities.

Examples of deceptive acts: A humane organization solicits using a project called "National Animal Protection Fund". The project is not national in scope. The solicitations talk about the animal shelter but do not mention that the group has endorsed animal euthanasia (without any attempt at adoption). Two organizations have used solicitations which look like confirmations of pledges when no pledge was made by the person.

Examples of unconscionable acts: An elderly woman was called repeatedly at her home. She was asked to give donations. When she said her money was tied up in an annuity, the caller masqueraded as her nephew when he called the annuity company and obtained information on her annuity. Two callers then pressured her into giving several thousand dollars. Many organizations mislead the elderly with the solicitations about social security and health issues.

New subsection (f) applies to groups which use a name which sounds like a charitable organization but which is a for-profit group. The phone sales pitches often sound like a charitable solicitation. Missouri sued a similar group because the company defined a handicapped worker as one with hay fever, hang nail or pregnancy.

New subsections (g), (h) and (i) were added to clarify the charitable purpose language. Many organizations claim big bucks

on "public education". Some of them do not even state that as a purpose on registration documents. For others, the education consists of small blurbs on the back of envelopes or on solicitations. One charity which was supposed to be dedicated to educating the public on emergency medicine was involved in low income housing projects. Even if the donor had asked for financial statements and a statement of purpose before giving, the donor would probably not have known the donation would go for that use.

SECTION 6. This mirrors the Kansas Consumer Protection Act venue section. It allows county and district attorneys to bring actions in their own counties if solicitations were received in counties other than Shawnee. This venue section may be implied, but this makes it clear.

Again, Attorney General Stephan urges you to approve this bill. It passed the House unanimously.

H.B. 2690.2

OFFICE OF THE DISTRICT ATTORNEY
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NOLA FOULSTON
District Attorney

Consumer Fraud &
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TESTIMONY

TO: SENATE JUDICIARY SUBCOMMITTEE ON PROBATE AND CIVIL PROCEDURES

FROM: NOLA FOULSTON, DISTRICT ATTORNEY, SEDGWICK COUNTY

RE: HOUSE BILL NO. 2690 - AN ACT CONCERNING THE CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT

SUBMITTED: MARCH 13, 1990

I would like to thank the Chair and this Committee for allowing me the opportunity to submit a brief comment on the proposed amendment to the Kansas Charitable Organizations and Solicitations Act.

It is my belief that giving Kansas County and District Attorney's the same powers to enforce the Act as the Attorney General will not only provide more localized protection coverage for consumers, but may also help provide relief to the Attorney General by allowing the various County and District Attorney's to help shoulder the burden of enforcement. The language in House Bill No. 2690 is consistent with the authority given to County and District Attorney's by the Kansas Consumer Protection Act.

The Consumer Fraud and Economic Crime Division of my office receives numerous inquiries concerning charitable organizations. Every attempt is made by my staff to help ensure that consumers receive adequate information about charitable giving upon which to make informed choices. In the past, when it has become evident that an organization was using means of deception in their charitable solicitations, I have brought actions pursuant to the Kansas Consumer Protection Act. I believe the proposed changes found in House Bill No. 2690 will provide my office with a more specific means of enforcing the laws against fraudulent charitable organizations. It is for these reasons that I support House Bill No. 2690 and urge its passage.

Respectfully submitted,

NOLA FOULSTON
DISTRICT ATTORNEY

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STATE OF KANSAS

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Before the Senate Sub-Committee on Probate and Civil Procedures
House Bill No. 2996

Testimony Presented by
Assistant Attorney General Mark W. Stafford
On Behalf of Attorney General Robert T. Stephan
March 15, 1990

Attorney General Stephan thanks this committee for an opportunity to support House Bill No. 2996. We request passage of this bill as an amendment to the Kansas administrative procedures act in order to clarify the time period within which a person may request a hearing following agency action.

Presently, an agency may issue a summary order which is subject to the right to request a hearing. The summary order must include notice of the expiration of the time for requesting a hearing. However, no time period for making such a request is prescribed by statute.

The legislative history of the Kansas administrative procedures act includes many amendments, some of which involved delayed effective dates, and some of which were again amended before being printed in the Kansas Statutes Annotated. Under the original law, summary proceedings were available if the agency adopted appropriate regulations. A party could obtain

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review of the summary order by filing a written request within 15 days after service of the order. See K.S.A. 1988 Supp. 77-539.

Chapter 356, section 6 amended K.S.A. 1987 Supp. 77-513 to delete the requirement of regulations authorizing summary proceedings. Section 3 added to K.S.A. 1987 Supp. 77-508 a provision allowing agencies to issue orders subject to a right to a hearing. The time period prescribed for requesting a hearing was 15 days. This amendment, which was consistent with K.S.A. 1988 Supp. 77-539, never appeared in the Kansas Statutes Annotated. Chapter 283 of the 1989 Session Laws deleted this amendment to K.S.A. 1988 Supp. 77-508 and repealed K.S.A. 1988 Supp. 77-539. The result is an increased opportunity for agencies to take action subject to the right of requesting a hearing, but a lack of a prescribed time period for requesting a hearing following agency action. House Bill No. 2996 would supply the appropriate time period.

Section 2(b) of the bill is appropriate in light of other substantive law which may provide a different time period for requesting a hearing.

We have approached the staff at the Judicial Council regarding the need for this amendment. We were advised that, since the appropriate committee was not scheduled to meet in the near future, the material would be mailed to committee members for their review. To date we have received no objection to the amendment.

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March 15, 1990

TO: Senate Judiciary Committee

FROM: Kansas Medical Society Chip Wheelin

SUBJECT: House Bill 3043; Compensation Paid Screening Panel Members

Thank you for this opportunity to express our support of HB 3043. Some of our members who have served on screening panels have reported to us that because such panels must review extensive, technical information, the panels devote a substantial amount of time to their deliberations and report. When analyzed in comparison to the modest compensation paid to panel members, this translates into a rather low fee per hour of service.

We believe that an increase in the amount paid to panel members will encourage more physicians to serve as members and will encourage more attorneys to serve as chairmen. For this reason, we respectfully request your favorable recommendation on HB 3043. Thank you for your consideration.

CW:lg

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