

Approved 2-14-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 a.m./p.m. on January 29, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Garner and Sebelius who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Kay Farley, Child Support Coordinator, Office of Judicial Admin.
Anne McDonald, Court Trustee, Wyandotte County
Danny Vopat, Shawnee County District Court Trustee
Herbert W. Walton, Administrative Judge of Johnson Co., Ks.
Peggy Elliott, Court Trustee, Tenth Judicial District
Keith Kentch, private citizen

The meeting was called to order by the Chairman.

Matt Lynch, Judicial Council appeared and requested three bills as follow:

- (1) concerning civil procedure; relating to redemption of real property;
- (2) concerning child support; extending support through high school.
- (3) concerning adoption; relating to proceedings to terminate parental rights.

Representative Smith moved that the requested legislation be introduced. Representative Everhart seconded the motion. The motion carried.

Revisor's Staff distributed Court Trustee Profiles Sheet (Attachment # 1) in connection with HB 2006.

Kay Farley, Child Support Coordinator, Office of Judicial Administration, appeared as a proponent of HB 2006, and distributed (Attachment # 2), which includes Court Trustee Program Overview and suggestions for clarifying the proposed legislation. Balloon bill is a part of the attachment.

A committee member asked if the proposal adopted in its present form would allow for obligees to opt out or if there would be any effect on procedures put in place to set up a hearing officer, i.e. for someone getting out of trustee system, will hearing remedies be available.

Anne McDonald, Court Trustee, Wyandotte County, appeared in support of HB 2006, and encouraged the committee to incorporate OJA's suggestions and her suggestions regarding making the bill effective on January 1, rather than on July 1, and making clear that counties study and recoup indirect costs. (Attachment # 3).

A committee member asked if the fees charged are at a rate of 3% if non-ADC. Ms. McDonald said this is true in Wyandotte County, that the fee schedule will be adjusted in connection with some administrative changes; that a non 4-D case is where

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on January 29, 1991.

services have not been applied for through the Federal 4-D program; that the SRS and Court Trustee in Wyandotte County enjoy a good rapport and good working relationship.

Danny Vopat, Shawnee County District Court Trustee, appeared as a proponent of portions of HB 2006 and as an opponent to some of the bill's provisions. Mr. Vopat distributed (Attachment # 4), including a balloon version of the bill. Mr. Vopat said he supports the adoption of the revised version of HB 2006.

Mr. Vopat affirmed that the only change in the balloon is striking language on Page 2 Line 27.

Herbert W. Walton, Administrative Judge of Johnson County, Kansas appeared in general support of HB 2006, but offered several amendments. (Attachment # 5).

Judge Walton also noted his staff's support of HB's 2008 and 2009.

A committee member asked if this legislation will have an effect on the hearing officer enforcement proceeding if the people opt out of this system. Judge Walton said if they opt out they would not have jurisdiction to hear the matter through the hearing officer.

A committee member asked (regarding Judge Walton's request to have the fund in the district court) if the present system has worked, i.e. sending the funds to the general fund of the County Commission. The Judge said the present system works very well. Judge Walton said he would like to insert the words "or District Court" in Line 21 following the word "county"; that his current program is so administered by all the 16 Judges in Johnson County.

A committee member asked if the new language were added what would prevent a Judge from spending the funds on other purposes than child support enforcement.

A committee member asked what a judge would have to do to comply with the law on setting up the fund if the amendment were not added. Judge Walton said it would have to go through the County Treasurer's Office from the Trustee's Office with additional expenses being generated - some unnecessary; that if it were under the Court, it would remain a separate distinct fund.

Peggy Elliott, Court Trustee, Tenth Judicial District, appeared in support of HB 2006, but supported ammendments, as set out in (Attachment # 6).

A committee member asked (regarding Section 3) if most cases go through the Trustee's Office. Ms. Elliott affirmed. Ms. Elliott said KSA 60-1610 already covers new suggestions.

Keith Kentch, a private citizen appeared as a proponent of HB 2006 but noted concerns (see Attachment # 7).

There being no other conferees, the hearings on HB's 2004 and 2005 were closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on January 29,, 1991

The chairman appointed a sub-committee to study HB 2005.
Appointees are: Representative Hamilton, Chairperson;
Representative Smith and Representative Carmody.

Representative O'Neal moved that HB 2004 be passed.
Representative Smith seconded the motion. Staff noted on Page
2 the word "pounds" should be changed to "grams" per suggestion
of the Department of Health and Environment. Representative
O'Neal amended his original motion so that both ounces and
grams are shown. Representative Smith seconded the motion.
The motion carried.

The meeting adjourned at 4:55 p.m. The next meeting of the
committee is scheduled for Wednesday, January 30, 1991, at
3:30 p.m. in room 313-S.

COURT TRUSTEE PROFILES

<u>Judicial District</u>	<u>Non-IV-D Fees</u>	<u>Non-ADC Fees</u>	<u>Date CT Established</u>
2nd	5%	5%	Jan. 1986
*3rd	2.5% (reduced eff. 4-1-90)	2%	March 1973
5th	5%	5%	Sept. 1974
8th	5%	0%	June 1989
9th--MP Co.	3% (reduced eff. 9-1-89)	3%	March 1986
--HV	5%	5%	Jan. 1990
**10th	1.5% (reduced eff. 1-1-90)	1.5%	Sept. 1972
13th	5%	5%	Jan. 1987
16th	5%	5%	Jan. 1991
18th	5%	5%	July 1985
22nd	0%	0%	April 1977
24th	5%	5%	August 1985
29th	5%	2%	Oct. 1979

* Cap of \$25/month.

** Cap of \$11.25/month.

HJUD
 Attachment 1
 1/29/91

HOUSE BILL 2006
HOUSE JUDICIARY COMMITTEE
JANUARY 29, 1991

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to support House Bill 2006. I do, however, have some suggestions for your consideration that I think will clarify the proposed legislation.

Court Trustee Program Overview

After the 1968 "revised" version of the Uniform Reciprocal Enforcement of Support Act was adopted by the Kansas Legislature in 1970, discussion led to the passage of an act with the purpose of improving support enforcement services. The act provides that a self-supporting court trustee system can be established in any judicial district in which the judges adopt local court rules for a system set forth in the statutes (K.S.A. 23-452 to K.S.A. 23-4,100, inclusive).

This act became effective in 1972 and has been generally accepted as a low-cost and effective method of enforcing duties of support. Powers of a District Court Trustee are set forth in K.S.A. 23-496 and in Supreme Court Rule 172. A District Court Trustee is an attorney appointed by the Administrative Judge in a judicial district to enforce the support orders of the judicial district. A District Court Trustee also has the authority to establish support obligations and to prosecute in-state and interstate non-payment of child support through all available civil remedies. Local court rules in each judicial district with a court trustee program provide for the specific duties of the District Court Trustee and whatever additional responsibilities a particular district court may assign. Personnel rules and reimbursement matters are covered in K.S.A. 23-4, 177.

Original start-up costs and other expenses are part of district court county operating fund budgets submitted to county commissioners by Administrative Judges for approval annually (K.S.A. 23-497 to K.S.A. 23-499, inclusive). The general goal of the Kansas court trustee program is to provide effective support enforcement services at a low-cost to Kansas residents, and at little cost to Kansas taxpayers.

HJUD
Attachment 2
1/29/91

The court trustee program by statute must be funded by the counties, and the counties are reimbursed for their costs through users fees. The District Court Trustee can secure reimbursement for the county by recouping up to 5% of child support paid on cases referred to the District Court Trustee. (K.S.A. 23-497) Also, federal funding may be available through a contract between the Office of Judicial Administration (OJA) and the Kansas Department of Social and Rehabilitation Services (SRS). The federal funding includes a percentage of the administrative costs for the court trustee program for time spent working on cases referred to the District Court Trustee by SRS, and an incentive payment of approximately 6% of the collections made on behalf of the SRS related cases.

The district courts in Kansas may enter a variety of different types of support orders. Depending on the local court rule, the District Court Trustee may be involved in the enforcement of some orders and not others. The District Court Trustees are responsible for not only cases in which SRS has an involvement, but other cases as well. Cases can be referred automatically to the court trustee programs for monitoring and enforcement, unless the obligee claims good cause for not utilizing the court trustee program services. National statistics show that only about 28% of the obligors ordered to pay support, pay the full amount of the support on a timely basis. If an obligee is granted a good cause waiver for not utilizing the court trustee program services and later needs child support enforcement services, the obligee can then apply to the District Court Trustee and request services.

At this time twelve of the thirty-one judicial districts have court trustee programs. A map is attached to show you where these existing programs are located.

The following provides you with information about when the individual court trustee programs were established:

<u>District</u>	<u>Date Court Trustee Program Established</u>
2nd	January 1986
3rd	March 1973
5th	September 1974
8th	June 1989
9th	March 1986
10th	September 1972
13th	January 1987
16th	January 1991
18th	July 1985
22nd	April 1977
24th	August 1985
29th	October 1979

Court trustee programs have proven very beneficial. The chart below shows the FY '90 court trustee collections:

<u>District</u>	<u>FY '86</u>	<u>FY'89</u>	<u>FY '90</u>
2nd	\$ 13,478.24	\$ 226,854.92	\$ 257,528.59
3rd	1,901,086.92	7,980,975.18	9,358,507.18
5th	62,450.39	292,099.36	438,457.08
8th	Not applicable	35,545.88	826,690.17
9th	Not applicable	809,320.49	1,008,930.61
10th	15,471,712.64	24,571,266.85	27,343,266.85
13th	Not applicable	1,346,341.60	1,641,672.45
18th	1,395,693.90	4,944,103.23	5,913,231.32
22nd	109,288.13	349,636.92	435,769.24
24th	Not applicable	192,053.87	207,742.20
29th	<u>\$ 1,530,195.23</u>	<u>\$ 2,275,404.61</u>	<u>\$ 2,357,378.59</u>
Total	\$20,483,905.45	\$43,023,602.91	\$49,789,174.86

House Bill 2006

I am speaking today in support of House Bill 2006. The establishment of a separate court trustee operations fund should enhance the expansion of court trustee program services. I do, however, have several suggestions for clarifying the proposed legislation.

On line 36 of page 1, I suggest that the phrase "start-up costs, expansions, and" be added. We would like for it to be clear that the county can recoup any monies that they have invested in the court trustee program.

Beginning on line 37 of page 1, I suggest that the proposed last sentence of Section 1 be deleted. From an administrative point of view, it is more efficient to allow an obligor that has complied with the support obligation to opt-out of services than for the court trustee program to set up a separate fee structure. Proposed new language in Section 3 on page 2 would allow the parties to opt-out of court trustee program services if no enforcement action has been required over a two-year period.

On line 4 of page 2, I suggest that the phrase "which has a single court trustee operation serving all the counties in that district" be added to clarify that services are being provided district wide.

Following line 15 of page 2, I suggest the insertion of a third alternative for setting up a court trustee program.

- (3) The expenditure for a court trustee office in a multi-county district which does not operate in all counties of the district shall be paid proportionately from the court trustee operations fund of each county served by the court trustee.

Testimony of Kay Farley
Page 4

In practice, some judicial districts have started their court trustee programs in just one county with the intention of expanding to other counties as financing allows.

On line 20 of page 2, I suggest that the phrase "obligee or" be inserted. It is generally the obligee that determines whether or not enforcement services are needed.

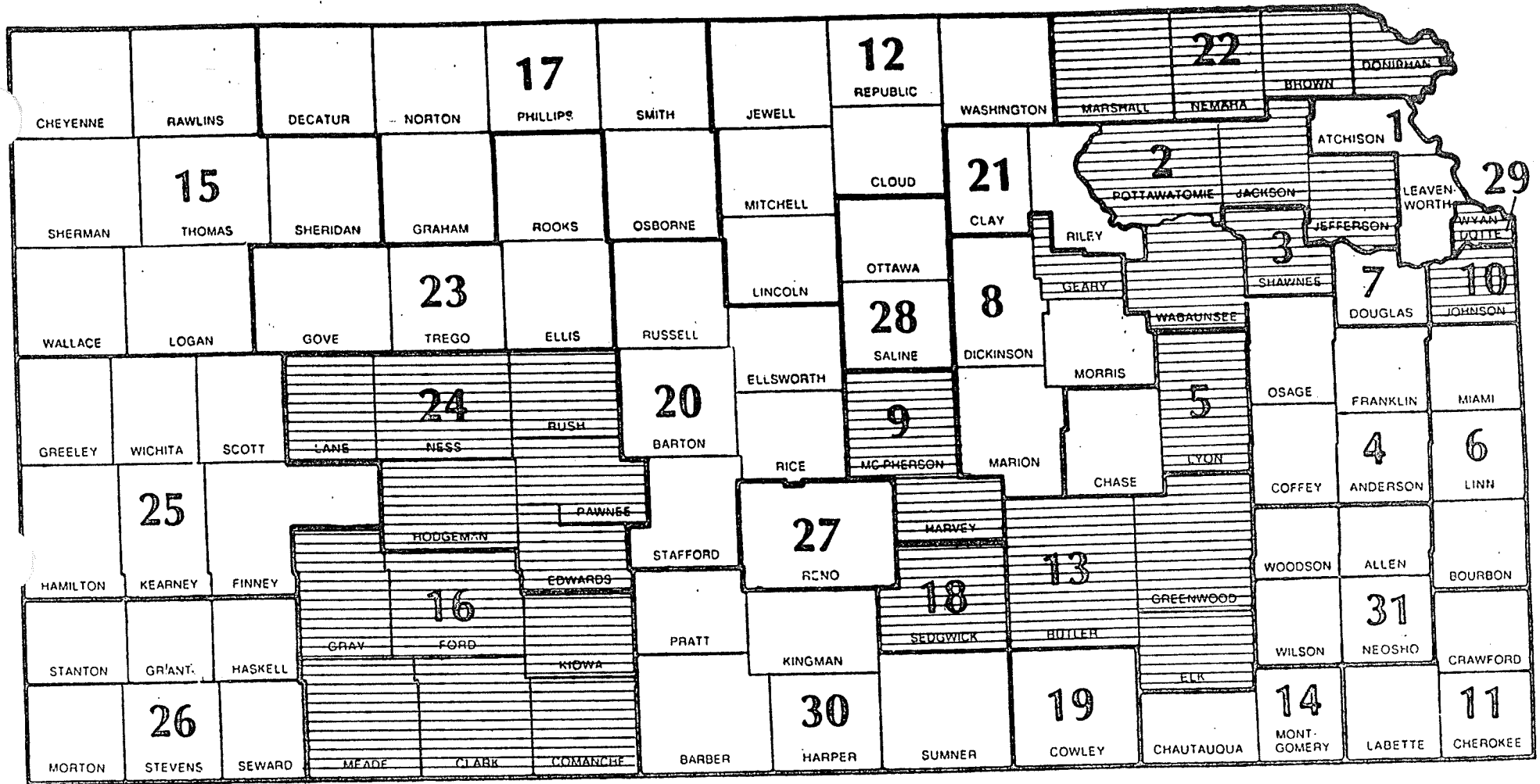
On line 28 and 29 of page 2, I suggest that the phrase "and no more than one calendar month of arrearage has accumulated" be stricken. This suggestion is merely to simplify the language.

Thank you for your time and attention.

KF:ljb



Kansas Judicial Districts (31)



HOUSE BILL No. 2006

By Special Committee on Judiciary

Re Proposal No. 15

12-28

AN ACT concerning domestic relations; relating to enforcement of support; court trustees; amending K.S.A. 23-497, 23-498 and 23-4,100 and repealing the existing sections.

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

Section 1. K.S.A. 23-497 is hereby amended to read as follows: 23-497. To defray the expenses of operation of the court trustee's office, the court trustee is authorized to charge an amount, not to exceed 5% of the funds collected from obligors through such office, as determined necessary by the administrative judge, ~~which as provided by this section.~~ All such amounts shall be paid to the ~~county general court trustee operations~~ fund of the county where collected. *There shall be created a court trustee operations fund in the county treasury of each county, in each judicial district that establishes the office of court trustee for the judicial district. All expenditures from the court trustee operations fund shall be made in accordance with the provisions of K.S.A. 23-492 et seq. and amendments thereto to enforce duties of support.* The court trustee shall be paid compensation as determined by the administrative judge. The board of county commissioners of each county to which this act may apply shall provide suitable quarters for the office of court trustee, furnish stationery and supplies, and such furniture and equipment as shall, in the discretion of the administrative judge, be necessary for the use of the court trustee. The administrative judge shall fix and determine the annual budget of the office of the court trustee and shall review and determine on an annual basis the amount necessary to be charged to defray the expense of ~~operations of the office of court trustee.~~ ~~The court shall provide by court rule a procedure which provides a reduction in the amount established pursuant to this section to defray the expenses of operation of the court trustee's office for obligors who have complied with duties of support.~~

start-up costs, expansions, and

Sec. 2. K.S.A. 23-498 is hereby amended to read as follows: 23-498. All expenditures provided for in this act shall be paid as follows:

2-6

1 expenditure shall be paid by the board of county commissioners from
2 the county general court trustees operations fund as provided in
3 K.S.A. 23-497 and amendments thereto.

which has a single court trustee operation serving
all the counties in that district

4 (2) In each judicial district consisting of more than one county,
5 such expenditure shall be paid by the board of county commissioners
6 of the county having the greatest population in such district from
7 the general court trustees operations fund of such county, and such
8 board of county commissioners shall send a statement to the board
9 of county commissioners of each of the other counties in such district
10 for a proportional amount of such annual expenditures with such
11 proportion to be based upon the respective populations of each
12 county within such judicial district. Each board of county commis-
13 sioners receiving a statement pursuant to this section shall make
14 payment of the same from the general court trustees operations
15 fund of the county.

16 Sec. 3. K.S.A. 23-4,100 is hereby amended to read as follows:
17 23-4,100. (a) The district court shall provide by court rule for such
18 other matters as are necessary to carry out the purpose of this act,
19 including, but not limited to, the appointment of deputy trustees
20 and other staff and a procedure to review written requests of the
21 obligor for exemption from the office of court trustee's responsibility
22 for collection of support as provided in subsection (b).

(3) The expenditure for a court trustee office in a multi-
county district which does not operate in all counties
of the district shall be paid proportionately from the
court trustee operations fund of each county served by
the court trustee.

obligee or

23 (b) (1) In reviewing the written request for exemption provided
24 in subsection (a), the presiding judge shall make a determination on
25 whether the claimant's request is a good cause claim based on all
26 relevant factors, including, but not limited to, the following:

(A) No enforcement action has been required by the district court
trustee and no more than one calendar month of arrearage has
accumulated over a two-year period of time;

(B) the existence of a viable guarantee of payment of the support
obligation, including, but not limited to:

- (i) A preexisting income withholding order;
- (ii) an existing military allotment for dependents or an order for
immediate establishment of a military allotment for dependents;
- (iii) filing of a bond or surety; or
- (iv) any other form of guarantee of payment as may exist;

(C) the employment of private counsel to enforce the support
obligation; or

(D) any other factor considered relevant by the presiding judge.

(2) The presiding judge's determination shall be based upon the
totality of the circumstances and no one factor shall be determinative
as to the outcome of the claimant's request for such good cause claim

- 1 Sec. 4. K.S.A. 23-497, 23-498 and 23-4,100 are hereby repealed.
- 2 Sec. 5. This act shall take effect and be in force from and after
- 3 its publication in the statute book.

TESTIMONY ON HOUSE BILL NO. 2006

House Bill 2006 establishes a Court Trustee operations fund in each judicial district; formerly any revenues usually went into the county general fund and there was no guarantee they were used to benefit the Child Support Enforcement program. This bill would require any "profit" from the Court Trustee Office to be put back into the operation.

The ultimate mission of the Court Trustee office and any Child Support Enforcement program is to help make life better for children. Many believe that, although such an operation should be self supporting, it should not make a large profit at the perceived expense of the children, particularly if the revenue is used for other county programs not directly related to Child Support Enforcement. I support the idea that the Court Trustee offices should not cost either the children or the county any more than the minimum needed to provide quality child support enforcement services. House Bill 2006 is intended to bring present practices more in line with this goal.

I would like to point out two items I believe you should consider and provide for if this bill is passed. First, the bill states the act will take effect upon publication, which is usually July 1st. Most counties' budgets are set up on a calendar year and it would be impracticable to set up a Court Trustee operations fund in the middle of a fiscal year.

Additionally, many counties provide indirect services to the Court Trustee office - they do their purchasing or payroll or cleaning and maintenance.

They usually are not compensated specifically for these services. But there are companies that can identify indirect costs and what portion of a department's budget they are. Delaying implementation of House Bill 2006 until January 1 would give counties some time to identify these costs. I'm told that some Court Trustee's who have had professional studies have found that indirect costs can represent as much as 25 to 40% of their annual departmental budget. I would also suggest that it be made clear that counties can recoup these indirect costs because I don't believe we want the unintended result of discouraging the Court Trustee Program. I believe the Interim Committee concluded that overall the Court Trustee operation is a good thing for the children of Kansas. Technically, there is no statutory mandate that counties or judicial districts provide Child Support Enforcement services. They do it because they support the mission of the Court Trustee offices. But they also have an obligation to the taxpayers. While counties should not reap an exorbitant profit, neither should they be required to subsidize the operation unless they so choose.

HJD
Attachment 3
1/29/91

I have been the Court Trustee in the 29th Judicial District, Wyandotte County, for seven years. I am glad to say that the office increased collections by 9% in 1990. We appreciate the scrutiny, the suggestions and the support of the Interim Committee and the legislature as a whole.

I encourage this committee to incorporate the changes suggested by Ms. Kay Farley of the Office of Judicial Administration and me, and then to report favorably on House Bill No. 2006.

Respectfully submitted,

Anne McDonald

Anne McDonald, #11394
Court Trustee
Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101
(913) 573-2992

HOUSE BILL NO. 2006
HOUSE JUDICIARY COMMITTEE
JANUARY 29, 1991

TESTIMONY OF DANNY J. VOPAT
SHAWNEE COUNTY DISTRICT COURT TRUSTEE

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to state my support for portions of this proposed House Bill No. 2006 and my opposition to some of the proposed bill's provisions.

I concur with the attached Office of Judicial Administration's revised version of House Bill No. 2006 with one major exception. Per my attached revised version, I respectfully request you amend the bill and delete part of line 26, page 2, beginning with the third word "including", and delete all of lines 27 thru 39, inclusive, of page 2. With this deletion I would request you end line 26 of page 2 with a period at the word "factors" in place of a comma.

As an historical overview I would point out to the House Judiciary Committee that I testified before the Special Committee on Judiciary in the summer of 1990. At that time I asked the Special Committee to attempt a change in K.S.A. 23-497 so that fees charged to support obligors under this statute would be used for child support enforcement. Due to the language of the current statute the collected fees were placed in the situs county's general fund. And, until recently in Shawnee County, it had been the practice that any excess fees collected over the District Court Trustee's operating expenses were left in the county's general fund to be used as the County Commissioners deemed fit.

I do not believe it was ever the intent of the Kansas Legislature to allow the District Court Trustee collection fee to be an additional source of revenue to the local counties that have operational trustee offices. Therefore, I requested that the Special Committee propose a House Bill to amend the existing statute so the collected fees would be placed in a special fund and not the county's general fund. This special fund should be set up solely to defray trustee office's operation expenses, both for present needs and future growth. Page 1 of House Bill No. 2006 has the necessary language to achieve this purpose. I urge the Committee to adopt the said changes for the sake of the children in Kansas who need or may need support enforcement services. The fee charge is necessary to make a self-supporting trustee enforcement program possible. But, these same children

HJUD
Attachment 4
1/29-91

should not have their support funds reduced to allow the counties to fund other governmental projects.

Towards my requested deletions to this proposed bill, I urge the committee to consider the results of not charging all support enforcement cases (both users of the service and potential users) an equal fee to defray the operation expenses of the trustee enforcement system. If just the "hard" cases for enforcement are left under the trustee caseload then not enough fees will be generated to fund the trustee program in each Judicial District operating a trustee system. Then the trustee program would have to turn to the local county tax payor for additional mill-levy tax revenues to fund the short fall in trustee fees. These "hard" cases rarely pay the support that is ordered, let alone the trustee fee.

Line 32, page 2, of the proposed bill refers to a "preexisting income withholding order". If such a case is not in the trustee office for monitoring, then who will modify the order when the obligation terminates or changes? Who will transfer the order to the obligor's new employer if the obligor changes jobs? Will the obligee or the obligor have to hire private counsel to make these changes? Was this not a service the trustee program was to provide?

My office presently establishes, monitors, and modifies income withholding orders on all enforcement cases in the office. And, these tasks have become one of the major staff-time users. The private counsel fees to either party for the same service would be many times more than the minimal trustee fee now being charged for such work.

Line 33 and 34, page 2, of the proposed bill refer to military allotments. If these are voluntary allotments, such can be stopped by the support obligor at will. And, the support obligee would then have to hire private counsel again, at a major expense, to enforce the case since the case would be opted out of the office.

Perhaps some statutory language is needed for a procedure to remove cases from trustee enforcement programs, but I recommend that such procedures be left to the local judicial administration in Judicial Districts which have trustee programs. The Shawnee County District Court has such a judicial administrative procedure.

In conclusion, I respectfully request the House Judiciary Committee adopt my attached revised version of the proposed House Bill No. 2006 to give trustee programs, like the one in the Shawnee County District Court, the necessary funds to continue operating at a self-supporting level, prepare for future growth needs, and provide an improved child support enforcement service

to the residents of Kansas. Let the fee be used for child support enforcement. Please do not require Kansas children to pay for other government services that other tax revenues should provide. But, please do not destroy the trustee fee program to the point that trustee child support enforcement programs have to look to other tax revenues to fund a desperately needed government service.

Mr. Chairman and Members of the Committee, thank you again for attention and time today.

Respectfully submitted,


Danny J. Vopat
Shawnee County District
Court Trustee

Shawnee County District
Court Trustee Office
Shawnee County Courthouse
200 SE 7th, Suite 207
Topeka, Kansas 66603
(913) 291-4090

HAPPY 130TH BIRTHDAY KANSAS!

HOUSE BILL No. 2006

By Special Committee on Judiciary

Re Proposal No. 15

OFFICE OF JUDICIAL ADMINISTRATION REVISED VERSION

12-28

10 AN ACT concerning domestic relations; relating to enforcement of
11 support; court trustees; amending K.S.A. 23-497, 23-498 and 23-
12 4,100 and repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 23-497 is hereby amended to read as follows:
16 23-497. To defray the expenses of operation of the court trustee's
17 office, the court trustee is authorized to charge an amount, not to
18 exceed 5% of the funds collected from obligors through such office,
19 as determined necessary by the administrative judge, ~~which as pro-~~
20 ~~vided by this section. All such~~ amounts shall be paid to the ~~county~~
21 ~~general court trustee operations~~ fund of the county where collected.
22 *There shall be created a court trustee operations fund in the county*
23 *treasury of each county, in each judicial district that establishes the*
24 *office of court trustee for the judicial district. All expenditures from*
25 *the court trustee operations fund shall be made in accordance with*
26 *the provisions of K.S.A. 23-492 et seq. and amendments thereto to*
27 *enforce duties of support. The court trustee shall be paid compen-*
28 *sation as determined by the administrative judge. The board of*
29 *county commissioners of each county to which this act may apply*
30 *shall provide suitable quarters for the office of court trustee, furnish*
31 *stationery and supplies, and such furniture and equipment as shall,*
32 *in the discretion of the administrative judge, be necessary for the*
33 *use of the court trustee. The administrative judge shall fix and de-*
34 *termine the annual budget of the office of the court trustee and*
35 *shall review and determine on an annual basis the amount necessary*
36 *to be charged to defray the expense of operations of the office of*
37 *court trustee. The court shall provide by court rule a procedure*
38 *which provides a reduction in the amount established pursuant to*
39 *this section to defray the expenses of operation of the court trustee's*
40 *office for obligors who have complied with duties of support.*

41 Sec. 2. K.S.A. 23-498 is hereby amended to read as follows: 23-
42 498. All expenditures provided for in this act shall be paid as follows:

43 (1) In each judicial district consisting of a single county such

start-up costs, expansions, and

7-7

1 expenditure shall be paid by the board of county commissioners from
2 the county general court trustees operations fund as provided in
3 K.S.A. 23-497 and amendments thereto.

4 (2) In each judicial district consisting of more than one county,
5 such expenditure shall be paid by the board of county commissioners
6 of the county having the greatest population in such district from
7 the general court trustees operations fund of such county, and such
8 board of county commissioners shall send a statement to the board
9 of county commissioners of each of the other counties in such district
10 for a proportional amount of such annual expenditures with such
11 proportion to be based upon the respective populations of each
12 county within such judicial district. Each board of county commis-
13 sioners receiving a statement pursuant to this section shall make
14 payment of the same from the general court trustees operations
15 fund of the county.

which has a single court trustee operation serving
all the counties in that district

16 Sec. 3. K.S.A. 23-4,100 is hereby amended to read as follows:
17 23-4,100. (a) The district court shall provide by court rule for such
18 other matters as are necessary to carry out the purpose of this act,
19 including, but not limited to, the appointment of deputy trustees
20 and other staff and a procedure to review written requests of the
21 obligor for exemption from the office of court trustee's responsibility
22 for collection of support as provided in subsection (b).

(3) The expenditure for a court trustee office in a multi-
county district which does not operate in all counties
of the district shall be paid proportionately from the
court trustee operations fund of each county served by
the court trustee.

obligee or

23 (b) (1) In reviewing the written request for exemption provided
24 in subsection (a), the presiding judge shall make a determination on
25 whether the claimant's request is a good cause claim based on all
26 relevant factors, including, but not limited to, the following:

27 (A) No enforcement action has been required by the district court
28 trustee and no more than one calendar month of arrearage has
29 accumulated over a two-year period of time;

30 (B) the existence of a viable guarantee of payment of the support
31 obligation, including, but not limited to:

- 32 (i) A preexisting income withholding order;
- 33 (ii) an existing military allotment for dependents or an order for
34 immediate establishment of a military allotment for dependents;
- 35 (iii) filing of a bond or surety; or
- 36 (iv) any other form of guarantee of payment as may exist;

37 (C) the employment of private counsel to enforce the support
38 obligation; or

39 (D) any other factor considered relevant by the presiding judge.

40 (2) The presiding judge's determination shall be based upon the
41 totality of the circumstances and no one factor shall be determinative
42 as to the outcome of the claimant's request for such good cause claim
43 for exemption.

4-5

- 1 Sec. 4. K.S.A. 23-497, 23-498 and 23-4,100 are hereby repealed.
- 2 Sec. 5. This act shall take effect and be in force from and after
- 3 its publication in the statute book.

HOUSE BILL No. 2006

By Special Committee on Judiciary

Re Proposal No. 15

12-28

DANNY J. VOPAT'S, SHAWNEE COUNTY DISTRICT COURT TRUSTEE, REVISED VERSION.

10 AN ACT concerning domestic relations; relating to enforcement of
11 support; court trustees; amending K.S.A. 23-497, 23-498 and 23-
12 4,100 and repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 23-497 is hereby amended to read as follows:
16 23-497. To defray the expenses of operation of the court trustee's
17 office, the court trustee is authorized to charge an amount, not to
18 exceed 5% of the funds collected from obligors through such office,
19 as determined necessary by the administrative judge, ~~which as pro-~~
20 ~~vided by this section. All such~~ amounts shall be paid to the ~~county~~
21 ~~general court trustee operations~~ fund of the county where collected.
22 *There shall be created a court trustee operations fund in the county*
23 *treasury of each county, in each judicial district that establishes the*
24 *office of court trustee for the judicial district. All expenditures from*
25 *the court trustee operations fund shall be made in accordance with*
26 *the provisions of K.S.A. 23-492 et seq. and amendments thereto to*
27 *enforce duties of support. The court trustee shall be paid compen-*
28 *sation as determined by the administrative judge. The board of*
29 *county commissioners of each county to which this act may apply*
30 *shall provide suitable quarters for the office of court trustee, furnish*
31 *stationery and supplies, and such furniture and equipment as shall,*
32 *in the discretion of the administrative judge, be necessary for the*
33 *use of the court trustee. The administrative judge shall fix and de-*
34 *termine the annual budget of the office of the court trustee and*
35 *shall review and determine on an annual basis the amount necessary*
36 *to be charged to defray the expense of operations of the office of*
37 *court trustee. The court shall provide by court rule a procedure*
38 *which provides a reduction in the amount established pursuant to*
39 *this section to defray the expenses of operation of the court trustee's*
40 *office for obligors who have complied with duties of support.*

start-up costs, expansions, and

41 Sec. 2. K.S.A. 23-498 is hereby amended to read as follows: 23-
42 498. All expenditures provided for in this act shall be paid as follows:
43 (1) In each judicial district consisting of a single county such

6-17

1 expenditure shall be paid by the board of county commissioners from
2 the ~~county general court trustees operations~~ fund as provided in
3 K.S.A. 23-497 and amendments thereto.

4 (2) In each judicial district consisting of more than one county,
5 such expenditure shall be paid by the board of county commissioners
6 of the county having the greatest population in such district from
7 the ~~general court trustees operations~~ fund of such county, and such
8 board of county commissioners shall send a statement to the board
9 of county commissioners of each of the other counties in such district
10 for a proportional amount of such annual expenditures with such
11 proportion to be based upon the respective populations of each
12 county within such judicial district. Each board of county commis-
13 sioners receiving a statement pursuant to this section shall make
14 payment of the same from the ~~general court trustees operations~~
15 fund of the county.

which has a single court trustee operation serving
all the counties in that district

16 Sec. 3. K.S.A. 23-4,100 is hereby amended to read as follows:
17 23-4,100. (a) The district court shall provide by court rule for such
18 other matters as are necessary to carry out the purpose of this act,
19 including, but not limited to, the appointment of deputy trustees
20 and other staff and a procedure to review written requests of the
21 obligor for exemption from the office of court trustee's responsibility
22 for collection of support as provided in subsection (b).

(3) The expenditure for a court trustee office in a multi-
county district which does not operate in all counties
of the district shall be paid proportionately from the
court trustee operations fund of each county served by
the court trustee.

23 (b) (1) In reviewing the written request for exemption provided
24 in subsection (a), the presiding judge shall make a determination on
25 whether the claimant's request is a good cause claim based on all
26 relevant factors, including, but not limited to, the following:

obligee or

27 ~~(A) No enforcement action has been required by the district court~~
28 ~~trustee and no more than one calendar month of arrearage has~~
29 ~~accumulated over a two-year period of time;~~

30 ~~(B) the existence of a viable guarantee of payment of the support~~
31 ~~obligation, including, but not limited to:~~

32 ~~(i) A preexisting income withholding order;~~

33 ~~(ii) an existing military allotment for dependents or an order for~~
34 ~~immediate establishment of a military allotment for dependents;~~

35 ~~(iii) filing of a bond or surety; or~~

36 ~~(iv) any other form of guarantee of payment as may exist;~~

37 ~~(C) the employment of private counsel to enforce the support~~
38 ~~obligation; or~~

39 ~~(D) any other factor considered relevant by the presiding judge.~~

40 (2) The presiding judge's determination shall be based upon the
41 totality of the circumstances and no one factor shall be determinative
42 as to the outcome of the claimant's request for such good cause claim
43 for exemption.

8-7

- 1 Sec. 4. K.S.A. 23-497, 23-498 and 23-4,100 are hereby repealed.
- 2 Sec. 5. This act shall take effect and be in force from and after
- 3 its publication in the statute book.

4-9

THE LEGISLATURE OF THE STATE OF KANSAS

HOUSE JUDICIARY COMMITTEE

January 29, 1991

RE PROPOSAL NO. 15

COURT TRUSTEES & ENFORCEMENT OF CHILD SUPPORT

May it please this Honorable Committee. My name is Herbert W. Walton and I am the Administrative Judge of Johnson County, Kansas. I appear in general support of the basic thrust of this legislative proposal. However, as with any good proposal, there are necessary amendments that could make it an outstanding proposal. Frankly, in my judgment, the proposal needs to be amended in three areas. With your permission, I would like to briefly state my basis for the request.

At the outset I would like to state that the District Court Trustee law was pioneered in Johnson County, Kansas. In my judgment we have an outstanding child support enforcement office. We collected approximately \$29,200,000.00 in child support in 1990. We owe much to the Honorable Harold R. Riggs, deceased District Judge, and to Donald Amrein, deceased and former District Court Trustee of Johnson County, Kansas.

There is an adage to the effect that if a system is working well why try to fix it. That is the

HJUD
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basis of my overall impression of certain aspects of the law. In Johnson County we have an excellent system that has served us well. In my judgment it would be a mistake to pass this proposal without three amendments. They are:

First, the concept of having a court trustee operations fund is satisfactory if you provide a disjunctive authority to have such a fund in the district court upon rule of the district court. This would avoid an accounting nightmare in a large urban district. A district court trustee operations fund would be audited and subject to proper scrutiny as any treasury fund. However, there is simply no sound reason to involve an accounting problem with two branches of government. Yet, if another district wants such a procedure, the disjunctive language would permit that district to use such procedure.

The second proposal concerns the language to the effect: " The court shall provide by court rule a procedure which provides a reduction in the amount established pursuant to this section to defray the expenses of the operation of the court trustee's office for obligors who have complied with duties of support." In my judgment this is a mistake. To start with it should be the obligees instead of obligors as the recipients of the support [obligees] are the paying parties. One

glaring problem would be the accounting nightmare of going through some 10,000 cases in our district with different equitable orders along with the monitor of same. This simply requires considerable more and unnecessary work. If the obligee does not want trustee involvement, the remedy is by request to the presiding judicial officer to remove the cause from trustee enforcement. The latter is presently the law of Kansas and serves as the better procedure. Furthermore, the author of this suggestion has overlooked the financial problem that is presented. The enforcement by the trustee is desired by most obligees. If they are to receive good service, it is a nominal user fee [1 1/2% in Johnson county]. If we have two separate groups, the trustee could be required to obtain supplemental appropriations or budget funding from the Board of County Commissioners. I can assure you that this would be most inappropriate and would put the desired level of enforcement in jeopardy. It would further require the fee to be increased to 5% on cases of enforcement to offset the lower fees from the cases not requiring enforcement. Most of the cases that would require the larger fee would probably be custodial parents who need the support the most. The present system works well and permits the lower user fee for all. It further permits a good system and one that is not subject to tax support. Here again, why not change the word "...shall..."

to "may". If a district desired such an approach, it could do so. Furthermore, it would be a mistake to suggest that payments not be paid through the trustee. There should be a flexible law to permit each district to fashion a system that works better for that district. That is our present law and to change that procedure would present terrible consequences for our district.

The third request concerns the factoring that must be considered for good cause to exempt one from enforcement by the trustee. While the factors are instructive and helpful, it should not be mandated with the word "shall". While it is true that the language gives the Court discretion with the words "... but not limited to ...", the factors contain language that provide a potential for future problems. I believe our trustee, Peggy Elliott, would like to present discussion on those issues.

Thank you for the privilege of presenting my views on this needed law. If I can be of further assistance, do not hesitate to contact me.

Proposal No. 15 Child Support and Child Custody
Special Committee on Judiciary
House Bill 2006
January ~~30~~²⁹, 1991

Testimony of Peggy A. Elliott
Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for allowing me to testify regarding House Bill
No. 2006.

Section 1. First of all I want to state that I am in complete agreement with the general thrust of this provision which sets up a separate fund for the operational expenses of the Court Trustee's offices in judicial districts that have such an office. I would, however, amend the Bill to give the Administrative Judge the option of setting up a separate fund outside of the "county treasury of each county, . . ." Since inception of the office of the Johnson County Court Trustee in 1972, all court trustee funds have been placed in a separate account which is administered by the Administrative Judge. This practice has stood the test of time and has proved to be the best procedure for this office. I believe our system complies with the intent of this committee, keeping Court Trustee funds for Court Trustee operations.

We also do not oppose the provision calling for an annual review of the expenses of the office and the fee needed to defray those costs. Johnson County has made a practice of reviewing the fee schedule from time to time and reducing the fees accordingly.

HJUD
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1/29/91

County Court Trustee's office further reinforces this by sending the obligor a delinquent notice if full payment has not been made within seven days after the due date.

2. Having the payments made to a court agency instead of directly to the obligee reduces some of the conflicts of the divorcing parties since they do not have to encounter each other when making the payment of support.

3. Keeping abreast of the obligor's address and employment is also much easier when the case is enforced by the court trustee's office from the start. If payments are made to the obligee for several years and then the payments stop, often the obligee has lost contact with the obligor and it is difficult to locate him/her.

4. Determining the correct arrearages is made much more difficult when the parties do not pay through the trustee's office and are allowed to opt in or out freely. Each time the obligee wants to again become a part of the program it is necessary to get an affidavit from him/her and set a hearing date to determine the correct arrears. This is very time consuming, and again, can cause hard feelings between the parties if they do not agree on the arrearage figure.

5. Keeping a case in the court trustee's office has advantages for both parties in that either one can request a payment record at any time for any purpose and certified payment records from the Johnson County court trustee's office are readily accepted by the courts, IRS, for subsidizing housing and many other reasons.

6. Most importantly, keeping a case in the court trustee's office is like having insurance. You hope it will never be needed but can be disastrous if it is needed. By keeping all cases in the trustee's office (except for those who show good cause as K.S.A. 60-1610 now allows) the fee can be reduced to the point where it is not a burden for any of the cases, good or bad.

Section 2. I concur with the amendments to this section with the exception that in Paragraph (1) I believe it should read:

"(1) In each judicial district consisting of a single county such expenditure shall be paid or approved by the the board of county commissioners or administrative judge from the court trustees operations fund as provided in K.S.A. 23-497 and amendments thereto."

Section 3. I believe the changes to this section are unnecessary. K.S.A. 60-1610(a)(1) and (b)(2)(1989 Supp.) allow the parties to opt out of payments being made through a court trustee's office upon a showing of good cause. At the very least, this section should be changed to only allow the OBLIGEE to opt out since the fee is taken out of the payment made to him/her. Also, only the OBLIGEE can make application to join the federal IV-D program, which is a program to enforce support. All IV-D cases are enforced through either court trustee's offices or by SRS in judicial districts that do not have a court trustee office. By allowing the OBLIGOR to opt out would thwart the whole intent of the IV-D program. This program was established

to give obligees an effective method to have enforcement services at a cost that would not be prohibitive and to keep obligees and their children off welfare roles or to make sure that any payments made to child support went to the welfare agency (SRS in Kansas) if the Obligee was receiving AFDC.

Section 3 (b)(1)(A) would also pose an accounting nightmare for the trustees' offices. Further, just because an obligor pays support and does not build up "more than one calendar month of arrearage (over) a two-year period . . ." does not insure that once the period has passed that he/she will keep on paying. Then the obligee and the trustee's office must go through the process of figuring correct arrearages and the difficulty of locating the obligor again.

Section 3 (b)(1)(B) allows for a "viable guarantee of payment. . ." None of the possibilities listed is any guarantee of payment. (B)(i) "A preexisting income withholding order" is evidently to be considered as a guarantee of payment. However, I would strongly oppose this for the following reasons:

1. Obligor do change jobs, some very often. Then my question would be, who is to modify the income withholding order to the new payor? The obligee? The obligee's attorney? One such modification by private counsel would cost the obligee more than would have been accessed in fees.

2. Who is to modify the income withholding order as the circumstances change, i.e. emancipation of a child, change of custody or when arrearages are paid or any other circumstances

requiring a modification? Again, would the obligee be responsible for this? Or the obligee's private attorney?

3. Payors of income (employers of the obligor) will hate these orders even more than they do now if obligees begin telephoning them every day when a payment is late (some payors only send in the support once a month). Who will instruct the payors on exactly how they are to deduct wages?

(ii) Military allotment. This is certainly no guarantee of payment. If it is a voluntary allotment, the obligor can change the allotment at will.

(iii) Filing of a bond or surety. The provision is unworkable and seldom, if ever, done. Who will bond the obligor? And even if a bond is given, the obligor would be better off paying the support instead of paying the fee for the bond.

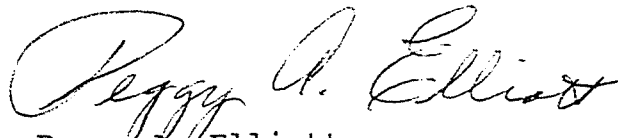
(iv) Any other form of guarantee of payment -- such as? Again, if the obligor has a banking institution automatically making the payments, this can be changed at will.

(C) The employment of private counsel. The IV-D program and court trustee's offices were established for the very reason that this would be an inexpensive method to enforce support. In years past, before the IV-D program or court trustee's offices, this was a chronic lament of the obligees -- if they weren't getting support, how could they afford a private attorney?

In conclusion, I believe that the Administrative Judge in each judicial district where there is a Court Trustee should retain control over the office and not the county treasurer or

the Board of County Commissioners. I further believe that the "opt in/opt out" provisions are very detrimental to the obligees in most cases.

Respectfully submitted,



Peggy A. Elliott

Peggy A. Elliott

PROPOSED BILL NO. 2006

By Special Committee on Judiciary

Re Proposal No. 15

AN ACT concerning domestic relations; relating to enforcement of support; court trustees; amending K.S.A. 23-497 and 23-498, and repealing the existing sections.

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

Section 1. K.S.A. 23-497 is hereby amended to read as follows: 23-497. To defray the expenses of operation of the court trustee's office, the court trustee is authorized to charge an amount, not to exceed 5% of the funds collected from obligors through such office, as determined necessary by the administrative judge as provided by this section. All such amounts shall be paid to the court trustee operations fund of the county where collected. There shall be created a court trustee operations fund in the county treasury or District Court of each county or as authorized by the Administrative Judge in each judicial district that establishes the office of court trustee. All expenditures from the court trustee operations fund shall be made in accordance with the provisions of K.S.A. 23-492 et seq. and amendments thereto to enforce duties of support. The court trustee shall be paid compensation as determined by the administrative judge. The board of county commissioners of each county to which this act may apply shall provide suitable quarters for the office of court trustee, furnish stationery and supplies, and such furniture and equipment as shall, in the

discretion of the administrative judge, be necessary for the use of the court trustee. The administrative judge shall fix and determine the annual budget of the office of the court trustee and shall review and determine on an annual basis the amount necessary to be charged to defray the expense of operations of the office of court trustee.

Sec. 2. K.S.A. 23-498 is hereby amended to read as follows:
23-498. All expenditures provided for in this act shall be paid as follows:

(1) In each judicial district consisting of a single county such expenditure shall be paid or approved by the board of county commissioners or administrative judge from the court trustees operations fund as provided in K.S.A. 23-497 and amendments thereto.

(2) In each judicial district consisting of more than one county, such expenditure shall be paid by the board of county commissioners of the county having the greatest population in such district from the court trustees operations fund of such county, and such board of county commissioners shall send a statement to the board of county commissioners of each of the other counties in such district for a proportional amount of such annual expenditures with such proportion to be based upon the respective populations of each county within such judicial district. Each board of county commissioners receiving a statement pursuant to this section shall make payment of the same from the court trustees operations fund of the county.

Sec. 3. K.S.A. 23-497 and 23-498 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Proponet

My name is Keith Kentch, I am a private citizen and also serve as a non-custodial parent on KCSEA. I would like to thank you for allowing my testimony, which concerns HB 2006.

KS Statue 79-2958 in breif states that when there are moneys remaining in a fund, those moneys are to be returned to that taxing subdivision only after all indebtedness and obligations of such fund have been cancelled. The office of court trustee never has its obligations fullfilled,therefore this statue is not in conjunction with KS Statue 24-497.

KS Statue 24-497 has allowed certain counties to reap huge profits in the past and present.

- 1) SN Co. 1986-1989 approx. \$242,000
- 2) Wy Co. 1989 alone \$161,429.01
- 3) SG Co. wouldn't give me amounts, but do charge the full 5%

In the spring of 1990 Sn Co. lowered from 4% to 2½% even with this reduction \$40,000 profit was earned for the general fund of Sn Co.

While additional taxes are of great concern to everyone, I do not feel that children receiving child support should be taxed. Chrildren do not earn an income but yet they are taxed on suppor money which has already been taxed at all levels.

This ammended bill only solves part of the current problem. I would still allow the fee to be raised to 5% at any time deemed neccessary by the administrative judge, to cover additional expenses of the office.

This could still create a windfall for the trustees office. And quite possibly could see unnecessary spending by the office just because the money is there.

We continue to pass laws to increase child support and to aid in collection of support due. But in reality testimony before the interim committee revealed that only around 50% of current support is collected and less than 1% of rearage spport colleted. So I ask you to consider when reveiwing this bill, will the additional money in the trustees office be spent for an increase in collection or just to ease someone's workload!

The fees charged should not be enough to create an overage large enough for funds to be misused. I think it should be very clear to everyone involved that duplication of services occur between Clerk of the District Court, SRS, and the Trustees Office. While HB 2006' is an improvement over present conditions, I hope that it does not create an open end expense account for the Trustees Office.

*HJUD
Attachment 7
1/29/91*

If I could call your attention to Page 2 line 21, the word obligor should be changed to obligee. The reason for that change, is the obligee is in a much better position to know whether opting out would be acceptable.

Line 28 should be changed to read trustee for a period not less than 4 years.

Line 29 to be deleted.

Line 30-38 deleted and Line 39-43 left intact. I do not believe opting out should be available to everyone, but should be available to those who can honestly show just cause. It was mentioned in other testimony that another statute gave the option to opt out, but from case histories known to me and have heard about this is very rare, because it is totally at the judge's discretion.

Again I thank-you for the opportunity to present this this testimony to you on behalf of myself and the children of Kansas.