

Approved

3-22-91

Date

MINUTES OF THE House COMMITTEE ON Judiciary

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

3:30 ~~xxx~~ a.m./p.m. on February 12, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Sebelius and Hochhauser 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:

Representative Eloise Lynch
Mr. Charles Harris, Wichita Attorney & Past Pres. of Family Law Section of Ks. Bar Association
Mr. Matt Lynch, Judicial Council
Jamie Corkhill, Attorney, SRS

The Chairman called the meeting to order and called for hearing on HB 2109, regarding county law libraries and library fees.

Representative Eloise Lynch appeared in support of HB 2109. Representative Lynch said the Saline County Law Library had recently reorganized and the fees are such that they need to be added under Section 1 (b) of the bill.

There being no further conferees, hearing on HB 2109 was closed.

The Chairman called for hearing on HB 2100, regarding proceedings to terminate parental rights in adoption.

Mr. Matt Lynch, appeared on behalf of the Judicial Council, distributed (Attachment # 1), and noted three other issues of concern addressed by the bill as follow: (1) Sub-sections (b), (d) Step parent adoptions and (e) Page 2 Lines 11 through 14.

Mr. Lynch introduced Mr. Charles Harris, Wichita attorney, Past President of the Family Law Section of the Kansas Bar Association, a member of the Family Law Advisory Committee of the Judicial Council, and a member of the Child Support Guidelines Committee that submitted the guidelines to the Supreme Court. Mr. Harris said HB 2100 needs to be passed; that the portion of the bill that provides for an additional ground for adoption needs to be implemented; that this will be a clear direction from the Legislature and the Supreme Court regarding intent.

A committee member expressed concern that the court could grant an adoption where a father is actively involved in parenting but has failed to provide a substantial portion of child support because of a financial dispute. The committee suggested a sub-set saying "and has knowingly failed to provide a substantial portion." The committee member said a father might be actively involved but because of the Supreme Court's interpretation, he is deemed to be a volunteer unless he pays all his money through the court.

Mr. Harris said the court could say the non-monetary support being provided may be sufficient support; that the context they are looking at is the person who is not doing anything.

A committee member suggested putting a warning into divorce decrees that the failure to pay a substantial portion could result in the child being adopted by a subsequent husband and ex-wife; that someone might be precluded for legitimate reasons under the proposed legislation.

CONTINUATION SHEET

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Mr. Harris pointed out each situation would have to be interpreted on a case by case basis by the trial court at the time based on the evidence.

A committee member noted the provision of the bill would not work in the case of a person in prison who could not provide support.

Mr. Harris said with all the current orders, a person would have to be ducking the system to fall into the category addressed by HB 2100.

A committee member noted that the Supreme Court has said we can't use child support as a bargaining chip for adoption. Mr. Harris affirmed. The committee member said a separate provision is being created that is tied solely to support. Mr. Harris said this is saying because of their failure to provide the monetary support as outlined, they have waived their right to consent the adoption.

A committee member asked how the court would handle a non-custodial parent who is not working or someone who is a drug addict. Mr. Harris said he believes that whatever the court ordered in the original decree is the obligation; that a factual observation will have to be made by the court as to the real income situation; that the usual case has nothing to do with a general ability to pay.

A committee member asked if consideration had been given to the court to deny the petition if the petitioner interferes with the parental rights.

Mr. Harris said he doesn't believe this needs to be expressly stated; that if evidence is documented, the court will deny anyway.

There being no further conferees, the hearing on HB 2100 was closed.

The Chairman called for hearings on HB 2102, child support through high school.

Mr. Charles Harris, previous conferee on HB 2100, appeared in support of HB 2102, (See Attachment # 2).

A committee member asked if the guidelines being referred to are part of the Kansas statutes or administrative rules and regs and procedures. Mr. Harris said they are administrative order of the Kansas Supreme Court. The committee member asked if in the case of Special Ed children the age limit should be changed to 21.

Jamie Corkhill, Attorney for Child Support Enforcement, SRS, appeared in support of HB 2102, but offered two suggestions in wording. (See Attachments # 3 and #4).

There being no further conferees, the hearing on HB 2102 was closed.

The Chairman asked the sub-committee working on HB's 2051 and 2052 to include HB 2102 for study.

The Chairman called for action on HB 2109.

Representative Snowbarger made a motion to amend HB 2109 into Senate Bill 59 to add Saline and Stafford Counties into the Senate Bill. Representative Smith seconded the motion. The motion to amend carried.

CONTINUATION SHEET

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Representative Snowbarger made a motion to pass Senate Bill 59 favorably.
Representative Macy seconded the motion. The motion carried.

Representative Snowbarger made a motion that HB 2109 be reported adversely.
Representative Macy seconded the motion. The motion carried.

The meeting adjourned at 4:45 P.M. The next scheduled meeting of the committee is
Wednesday, February 13, 1991, at 3:30 P.M. in Room 313-S.

JUDICIAL COUNCIL TESTIMONY ON H.B. 2100
HOUSE JUDICIARY COMMITTEE
February 12, 1991

1991 House Bill No. 2100 contains amendments to K.S.A. 1990 Supp. 59-2136 recommended by the Family Law Advisory Committee and approved by the Judicial Council.

K.S.A. 59-2136 is part of the adoption and relinquishment act passed last session and it replaced K.S.A. 38-1129 which was contained in the parentage act. K.S.A. 59-2136, as did K.S.A. 38-1129, sets forth a procedure for determining the necessity of obtaining a parent's relinquishment or consent to adoption.

The primary purpose of HB 2100 is to make failure to pay child support a separate criterion for eliminating the need for a parent's relinquishment or consent. Failure to pay support would be in addition to the ground that a parent has failed or refused to assume the duties of a parent for two consecutive years.

The Kansas Supreme Court has held that statutes in this area are to be strictly construed in favor of preserving parental rights and the facts warranting severance of parental rights must be clearly proved. Prior to 1982, minimal contacts or support were held to be sufficient to prevent a finding of failure to assume parental duties. In re Harrington, 228 Kan. 636 (1980); In re Steckman, 228 Kan. 669 (1980).

In 1982, the legislature amended the relevant statute so that in determining whether a parent had failed or refused to assume parental duties, ". . . the court may disregard incidental visitations, contacts, communications or contributions." In the first cases construing the 1982 language, minimal efforts in terms of contacts or support were disregarded. In re McMullen, 236 Kan. 348 (1984); In re Crider, 236 Kan. 712 (1985). However, more recent appellate decisions appear to take a more restrictive view of the 1982 amendment and tend to cite cases predating the amendment for authority in this area. In re F. A. R., 242 Kan. 231 (1987); In re B. J. H., 12 Kan. App. 2d 746 (1988); In re B. C. S., 245 Kan. 182 (1989).

The intent of the proposal is to prevent a parent from being able to stave off an adoption by making one or two minimal support payments every two years. At the same time, it is not the intent of the proposal that missing a few child support payments should eliminate the need for a parent's consent. The proposal attempts to give some flexibility to the courts and to place some limitations on use of the criterion by requiring (1) a knowing failure (2) to pay a substantial portion of support (3) when financially able to pay (4) for a period of two years.

In developing this recommendation, the advisory committee reviewed a similar provision in Indiana [I.C. 1990 Supp. 31-3-1-6(g)(1)]. Under the Indiana statute, a natural parent's

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attachment #1

consent is not required if the parent knowingly fails to provide for the care and support of the child when able to do so for a period of one year. Appellate decisions construing the Indiana provision hold that the party claiming the natural parent's consent is unnecessary has the burden to clearly show a willful failure to support and the ability to pay support. Bruick v. Augustyniak, 508 N.E. 2d 1307 (Ind. App. 1987); Snyder v. Shelby County Dep't of Pub. Welfare, 418 N.E. 2d 1171 (Ind. App. 1981).

In reviewing K.S.A. 59-2136, three other issues came to the attention of the advisory committee and are addressed in the bill.

The first of these issues is reflected in subsection (b) in lines 20 and 21 of page 1. The proposed amendment makes explicit the general understanding by committee members of how the section is to be applied.

The amendments to subsection (c) would make it discretionary with the court whether or not to appoint an attorney for a birth father whose whereabouts are unknown in a stepparent adoption. Prior to the enactment of the adoption and relinquishment act, there was not a requirement to appoint an attorney in such cases. The requirement for the appointment of an attorney does result in additional expense for the adoption petitioners and petitioners in stepparent adoptions often do not have the financial resources available to petitioners in independent or agency adoptions.

The last issue involves termination of parental rights in connection with a relinquishment and is reflected in amendments to subsection (e) in lines 11 through 14 on page 2. The adoption act sets out the appropriate venue for the various types of adoptions but it does not set out the venue for a petition under this section to terminate parental rights in connection with a proposed relinquishment. As mentioned previously, the substance of this section was formerly part of the parentage act and the proposed amendments would incorporate the venue provisions of the parentage act for use in petitions under this section to terminate parental rights in connection with a relinquishment.

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attachment #1-2

JUDICIAL COUNCIL TESTIMONY ON H.B. 2102
HOUSE JUDICIARY COMMITTEE
February 12, 1991

1991 House Bill No. 2102 contains amendments to K.S.A. 1990 Supp. 38-1121 (parentage act) and 60-1610 (divorce code) recommended by the Family Law Committee and approved by the Judicial Council.

Previously, the legislature has amended K.S.A. 38-1121 and 60-1610 to allow child support to continue beyond age 18 during the school year a child becomes 18 if the child is still attending high school.

Members of the advisory committee have encountered with some frequency situations in which a child has started school late or has been held back a year (for a variety of reasons) and is still attending high school beyond the time for which support can be ordered under the existing statute. In view of the importance of completing high school, and the steps the legislature has already taken in this area, the advisory committee recommends extending the existing statutes to cover such situations.

Ordering support remains discretionary with the court in the first place. Support during the school year in which the child reaches 18 continues unless otherwise ordered by the court. Hill v. Hill, 13 Kan. App. 2d 107 (1988). For the extended period of support represented by the proposal, a motion by the party seeking such support would be necessary before it could be continued. The proposal also contains an outer limit of age 20 for such support. Furthermore, it requires the child be a "bona fide" high school student for such support to continue. The advisory committee found it difficult to articulate a clear standard for measuring progress in school as a requirement for continuing such support and concluded the use of "bona fide" would give the court sufficient flexibility to address inappropriate claims for continued support.

MSJD
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attachment #2

Department of Social and Rehabilitation Services

House Bill 2102

Before the House Judiciary Committee
February 12, 1991

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. From this perspective, the Child Support Enforcement Program supports the committee's study of the needs of older children who are still in school and offers two suggestions concerning the wording of House Bill 2102.

Background

This bill amends the parentage act and divorce code to give the court the option, on motion, to order support through the end of high school if the child is a bona fide high school student under 20. It does not alter the existing provision that automatically extends support until June 1 if the child turns 18 while still in high school.

As the bill is presently worded, the judge may base this new, optional order on the guideline amount for a child 16 to 18 years old. We believe there is a serious risk that this discretionary reference to the guidelines would cause the State of Kansas to be found out of compliance with state plan requirements under Title IV-D of the Social Security Act. Federal regulators have scrutinized states' guidelines intensely in recent years, and we expect this close examination of all laws involving guidelines to continue.

The cost of being found out of compliance with a state plan requirement is substantial and immediate. Presently SRS receives approximately \$11,000,000 per year in Title IV-D funding. Once the finding of non-compliance is made, this federal funding stops; there is no grace period. The loss of federal funds would affect not only the SRS budget and fee fund, but would also create hardship for other state and county offices that rely on IV-D funds, such as the district court trustees.

CSE strongly recommends that the word "may" be changed to "shall" at page 1, line 37 and at page 3, line 26. We believe this change will leave judges with sufficient flexibility to adjust the amount to fit the circumstances of each case, particularly in light of their discretion in ordering support at all, without jeopardizing IV-D funding.

CSE would also bring to the committee's attention problems created by the references to "June 1" in House Bill 2102. In Hill v. Hill, 13 Kan.App.2d 107, the Kansas Court of Appeals defined "school year" with respect to support as the period from July 1 through June 30. The lack of alignment between the June dates creates ambiguities, particularly with respect to children born during June.

For example, when the appellate court's definition of "school year" is applied to the new subsection, it is not clear whether a child born in June who is not

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enrolled in summer school when he turns 18 is "still a bona fide high school student." This could result in inconsistent treatment of similarly situated children. With respect to existing provisions, the June 1 cut-off date leaves uncertain whether installments due on June 1 must be paid or not. It has also created different effects depending on whether June's support is all due on the first or is due in weekly or semi-monthly installments.

CSE suggests that all the references to "June 1" be changed to "June 30," to eliminate these uncertainties and anomalies. The date occurs four times: page 1, lines 30 and 33, and page 3, lines 19 and 22.

Fiscal Impact: Federal penalties for an unacceptable state plan under Title IV-D would begin immediately. Loss of all IV-D funding would total \$11,000,000 per year. A penalty against Title IV-A funds (AFDC) could also be levied, ranging from \$670,000 to (ultimately) \$67,000,000 per year.

If this legislation is enacted, assuming there is no reduction in federal funding, CSE would benefit from higher collections of \$60,000 per year (\$23,040 for public assistance cases and \$36,960 in Non-AFDC cases) and from federal incentives of \$2,789 per year. Administrative costs would increase slightly, \$1,523 per year, primarily for legal costs.

Jamie L. Corkhill
Child Support Enforcement
Social and Rehabilitation Services
296-3237

Attachment

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attachment #3-2

HOUSE BILL No. 2102

By Committee on Judiciary

2-1

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Att. 4

8 AN ACT concerning child support; extending such support through
9 high school; amending K.S.A. 1990 Supp. 38-1121 and 60-1610
10 and repealing the existing sections.

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

12 Section 1. K.S.A. 1990 Supp. 38-1121 is hereby amended to read
13 as follows: 38-1121. (a) The judgment or order of the court deter-
14 mining the existence or nonexistence of the parent and child rela-
15 tionship is determinative for all purposes.

16 (b) If the judgment or order of the court is at variance with the
17 child's birth certificate, the court shall order that a new birth cer-
18 tificate be issued.

19 (c) Upon adjudging that a party is the parent of a minor child,
20 the court shall make provision for support and education of the child
21 including the necessary medical expenses incident to the birth of
22 the child. The court may order the support and education expenses
23 to be paid by either or both parents for the minor child. When the
24 child reaches 18 years of age, the support shall terminate unless: (1)
25 The parent or parents agree, by written agreement approved by the
26 court, to pay support beyond that time; or (2) the child reaches 18
27 years of age before completing the child's high school education in
28 which case the support shall not *automatically* terminate, unless 30

29 otherwise ordered by the court, until June 1 of the school year
30 during which the child became 18 years of age if the child is still
31 attending high school; or (3) *the child is still a bona fide high school* 30
32 *student after June 1 of the school year during which the child became*

33 *18 years of age, in which case the court, on motion, may order*
34 *support to continue so long as the child is a bona fide high school*
35 *student. The court, in extending support pursuant to subsection* shall
36 *(c)(3), may impose such conditions as are appropriate and may set*
37 *the child support utilizing the guideline table category for 16-year*
38 *through 18-year old children. In no event shall provision for payment*
39 *of support under subsection (c)(3) extend beyond the time the child*
40 *reaches 20 years of age. Provision for payment of support and ed-*
41 *ucational expenses of a child after reaching 18 years of age if still*
42 *attending high school shall apply to any child subject to the juris-*
43

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Attachment #4

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1 diction of the court, including those whose support was ordered
 2 prior to July 1, 1988 1991. If an agreement approved by the court
 3 prior to the effective date of this act July 1, 1988, provides for
 4 termination of support before the date provided by subsection (c)(2),
 5 the court may review and modify such agreement, and any order
 6 based on such agreement, to extend the date for termination of
 7 support to the date provided by subsection (c)(2). *If an agreement*
 8 *approved by the court prior to July 1, 1991, provides for termination*
 9 *of support before the date provided by subsection (c)(3), the court*
 10 *may review and modify such agreement, and any order based on*
 11 *such agreement, to extend the date for termination of support to*
 12 *the date provided by subsection (c)(3).* The judgment shall specify
 13 the terms of payment and shall require payment to be made through
 14 the clerk of the district court or the court trustee except for good
 15 cause shown. The judgment may require the party to provide a bond
 16 with sureties to secure payment. The court may at any time during
 17 the minority of the child prospectively modify or change the order
 18 of support as required by the best interest of the child. The court
 19 shall enter such orders regarding custody and visitation as the court
 20 considers to be in the best interest of the child.

21 (d) In entering an original order for support of a child under this
 22 section, the court may include a requirement that an additional
 23 amount be paid to reimburse the expenses of support and education
 24 of the child from the date of birth to the date the order is entered
 25 and the necessary medical expenses incident to the birth of the
 26 child.

27 (e) In determining the amount to be paid by a parent for support
 28 of the child and the period during which the duty of support is
 29 owed, a court enforcing the obligation of support shall consider all
 30 relevant facts including, but not limited to, the following:

- 31 (1) The needs of the child.
- 32 (2) The standards of living and circumstances of the parents.
- 33 (3) The relative financial means of the parents.
- 34 (4) The earning ability of the parents.
- 35 (5) The need and capacity of the child for education.
- 36 (6) The age of the child.
- 37 (7) The financial resources and the earning ability of the child.
- 38 (8) The responsibility of the parents for the support of others.
- 39 (9) The value of services contributed by the custodial parent.

40 (f) The provisions of K.S.A. 1987 Supp. 23-4,107, and amend-
 41 ments thereto, shall apply to all orders of support issued under this
 42 section.

43 (g) An order granting visitation rights pursuant to this section

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1 may be enforced in accordance with K.S.A. ~~1987~~ Supp. 23-701, and
2 amendments thereto.

3 Sec. 2. K.S.A. 1990 Supp. 60-1610 is hereby amended to read
4 as follows: 60-1610. A decree in an action under this article may
5 include orders on the following matters:

6 (a) *Minor children.* (1) *Child support and education.* The court
7 shall make provisions for the support and education of the minor
8 children. The court may modify or change any prior order when a
9 material change in circumstances is shown, irrespective of the present
10 domicile of the child or the parents. Regardless of the type of cus-
11 todial arrangement ordered by the court, the court may order the
12 child support and education expenses to be paid by either or both
13 parents for any child less than 18 years of age, at which age the
14 support shall terminate unless: (A) The parent or parents agree, by
15 written agreement approved by the court, to pay support beyond
16 the time the child reaches 18 years of age; or (B) the child reaches
17 18 years of age before completing the child's high school education
18 in which case the support shall not *automatically* terminate, unless 30

19 otherwise ordered by the court, until June 1 of the school year
20 during which the child became 18 years of age if the child is still
21 attending high school; or (C) *the child is still a bona fide high school* 30

22 *student after June 1 of the school year during which the child became*
23 *18 years of age, in which case the court, on motion, may order*
24 *support to continue so long as the child is a bona fide high school*
25 *student. The court, in extending support pursuant to subsection* shall

26 (a)(1)(C), may impose such conditions as are appropriate and may
27 set the child support utilizing the guideline table category for 16-
28 year through 18-year old children. In no event shall provision for
29 payment of support under subsection (a)(1)(C) extend beyond the
30 time the child reaches 20 years of age. Provision for payment of
31 support and educational expenses of a child after reaching 18 years
32 of age if still attending high school shall apply to any child subject
33 to the jurisdiction of the court, including those whose support was
34 ordered prior to July 1, ~~1986~~ 1991. If an agreement approved by
35 the court prior to the effective date of this act July 1, 1988,
36 provides for termination of support before the date provided by
37 subsection (a)(1)(B), the court may review and modify such agree-
38 ment, and any order based on such agreement, to extend the date
39 for termination of support to the date provided by subsection
40 (a)(1)(B). If an agreement approved by the court prior to July 1,
41 1991, provides for termination of support before the date provided
42 by subsection (a)(1)(C), the court may review and modify such agree-
43 ment, and any order based on such agreement, to extend the date

(pp. 4 thru 8 omitted intentionally.)

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Attachment #4-3