Approved: 14 June 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter, Jr. at

10:05 a.m. on April 1, 1991 in room 514-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Jack Phillips, Kansas Child Support Enforcement Association
Jamie Corkhill, Kansas Department of Social and Rehabilitation Services
Chip Wheelen, Kansas Psychiatric Society
James Clark, Kansas County and District Attorneys Association
Ron Smith, Kansas Bar Association
Keith Kentch, Topeka
Kay Farley, Office of Judicial Administration
Matt Lynch, Kansas Judicial Council

Chairman Winter brought the meeting to order by asking the Committee's pleasure on HB 2003.
HB 2003 - prohibiting cities and counties from owning or operating certain prisons.

Senator Martin moved to amend HB 2003 beginning on line 19 by striking "until such time as the legislature has reviewed and provided a public policy regarding such activity" and to recommend HB 2003 favorable for passage as amended. Senator Gaines seconded the motion. The motion carried.

It was the consensus of the committee that this amendment would make it clear that legislative intent is to not allow for private prisons.

The Chairman opened the hearing on HB 2004.
HB 2004 - amendments to the Kansas parentage act; validity or reports; presumption of conception; interlocutory orders.

Jack Phillips, President of the Kansas Child Support Enforcement Association, testified in support of HB 2004. (ATTACHMENT 1)

Jamie Corkhill, Child Support Enforcement of the Kansas Department of Social and Rehabilitation Services, testified in support of HB 2004. (ATTACHMENT 2)

As no opponents to HB 2004 appeared, this concluded the hearing for HB 2004.

Chairman Winter opened the hearing for HB 2005.
HB 2005 - physician's statement as consideration in termination of parental rights.

Chip Wheelen, Kansas Psychiatric Society, testified in support of HB 2005. (ATTACHMENT 3)

James Clark, Kansas County and District Attorneys Association, testified in opposition to HB 2005. (ATTACHMENT 4)

Ron Smith, Kansas Bar Association, testified with comments on HB 2005. The stated that several parental rights have been determined by the Supreme Court as fundamental rights. He suggested their concerns could be addressed by expressly including the ability of cross examination to eliminate appeals.

This concluded the hearing for HB 2005.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:05 a.m. on April 1, 1991.

The Chairman opened the hearing for HB 2006.

HB 2006 - fees charged for enforcement of support orders by office of court trustee.

Keith Kentch, Topeka, testified in support of HB 2006 and suggested amendments. (ATTACHMENT 5)

Kay Farley, Child Support Coordinator of the Office of Judicial Administration, testified in support of HB 2006 and offered amendments. (ATTACHMENT 6)

Written testimony was received from Peggy Elliott, Court Trustee of the Tenth Judicial District, in support of HB 2006, but also offered suggestions for amendments. (ATTACHMENT 7)

Jamie Corkhill, Kansas Department of Social and Rehabilitation Services, responded to questions from the Committee by stating that SRS establishes the fee parameters and policy, the courts or their trustees enforce the actions and fee collections.

Committee discussion followed that stated the interim study found many problems exist in the enforcement system. They questioned whether continued support is appropriate for a system that appears so uneven. The concern is whether the children are receiving the funds that were intended to be theirs.

This concluded the hearing for HB 2006.

Chairman Winter opened the hearing for HB 2100

HB 2100 - proceedings to terminate parental rights in adoption.

Matt Lynch, Kansas Judicial Council, testified in support of HB 2100. (ATTACHMENT 8)

As no other conferees appeared on HB 2100, this concluded the hearing.

The meeting was adjourned.

Date 1 April 1991

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Kelly Kultala	NDW
Brad Bong	Washburn Univ.
Lisa Anderson	Washburn Univ.
Russell L. Northby	SRS - Adult/Youth Services
Michelle Moore	KAC - Topeka
Kay Farley	OJA
Paul Shelby	OJA
Chip Wheelen	KS Psychiatric Soc
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Jack Phillips	Kansas Child Support Enforcement Association.
Jamie Corkhill	SRS (CSE)
JIM CLARK	KCDAA
Matt Lynch	Judicial Council
Danny J. Vopat	Shawnee County District Court Trustee
Peggy A. Elliott	Jo. Co. Ct Trustees Office, Olathe, Ks.
Keith Sanders	Citizen Board KCSEA
Ron Smith	KS Bar Assoc

TESTIMONY OF JACK PHILLIPS

PRESIDENT OF THE KANSAS CHILD SUPPORT ENFORCEMENT ASSOCIATION

IN SUPPORT OF

Amendments to the Kansas Parentage Act--HB 2004

The Kansas Child Support Enforcement Association is a non-profit Kansas corporation affiliated with the National Child Support Enforcement Association and the Kansas Children's Coalition. Its membership includles a large number of people who work in the area child support enforcement. Many are employees of the Department of Social and Rehabilitation Services. We also have District Judges, District Court Trustees, County and District Attorneys, Clerks of District Court and personnel from the Office of Judicial Administration. The board of directors includes representatives from a cross-section of viewpoints: custodial parents, non-custodial parents, business, child advocates, Washburn Law School as well as the judicial and legislative branches of our government.

The Association publishes a quarterly newsletter called the "Enforcer" and holds a statewide training conference each year. Our most recent conference was in Lawrence, Kansas where we enjoyed presentations by regional and national authorities. We presented awards to recognize outstanding contributions in the field. Our next Conference will be held July 19th and 20th at the Holidome in Manhattan, Kansas.

On behalf of the KCSEA, I urge the committee to support this bill which will simplify and expedite paternity cases.

1. Amendment-- to 38-1118 specifying the span of time in which a party may file a "notice of intent to challenge blood test report". This section will correct a deficiency in the present statute which does not provide sufficient advance notice to the court or counsel regarding objections to the blood test report. Without sufficient advance notice it is impossible to properly schedule

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the length of the trial or to make approriate arrangements for expert witnesses.

Present form: ". . . . **The verified written report of the court-appointed expert shall be considered to be stipulated to by all parties unless written notice of intent to challenge the validity of the report is given to all parties not less than 20 days before trial. . . . ." (underlining added)**

Amended form: ". . . . **The verified written report of the court-appointed expert shall be considered to be stipulated to by all parties unless written notice of intent to challenge the report is given to all parties not more than 20 days after receipt of a copy of the report . . . . . "(underlining added)**

2. Amendment to K.S.A. 38-1119 regarding time of conception. This section will facilitate litigation of paternity cases by officially recognizing scientific facts about human gestation. In the typical case it will reduce or eliminate the need to present legal proof of such matters. Otherwise, one must call the mother's obstetrician as an expert witnesses or request that the court take judicial notice of medical textbooks. The weight of an infant at birth is significant because low birth weight frequently indicates prematurity.

"For any child whose weight at birth is equal to or greater than five pounds and twelve ounces, or 2,608.2 grams, it shall be presumed that the child was conceived between 300 and 230 days prior to the date of the child's birth. This presumption may be rebutted by clear and convincing evidence."

3. New-- Interlocutory Orders. This section enumerates various interlocutory orders available in paternity cases and establishes minimum requirements for ex parte orders. In this manner, arrangements for genetic testing could be made without unnecessary delay because the formality of a hearing would not be needed in the typical case. Present law already requires paternity blood tests upon the request of any party. By confirming the existing custody of the child, the court invokes maximum legal protections against

parental kidnapping or other interference with parental rights.

"After filing a parentage action, the court, without requiring bond, may make and enforce orders which:

(1) restrain the parties from molesting or interfering with the privacy or rights of each other;

(2) confirm the existing de facto custody of the child subject to further order of the court;

(3) appoint an expert to conduct genetic tests for determination of paternity as provided in K.S.A. 38-1118;

(4) order the mother and child and alleged father to contact the court appointed expert and provide blood samples for testing within 30 days after service of the order.

Ex Parte Orders. Interlocutory orders authorized by this section may be issued after ex parte hearing, provided: (1) the appointed expert shall be a Paternity Laboratory accredited by the American Association of Blood Banks and (2) the order may not require an adverse party to make advance payment toward the cost of the test. If issued ex parte, and if an adverse party requests modification thereof, the court will conduct a hearing with 10 days of such request."

KCSEA President Jack Phillips, P.O. Box 2294, Olathe, KS 66061

Office: (913) 782-6600 Home: (913) 491-0333 or (913) 491-3090

Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

House Bill 2004

Before the Senate Judiciary Committee
April 1, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing and enforcing support orders. This responsibility includes establishing the parentage of a child, when necessary, under the Kansas Parentage Act. From that perspective, SRS favors passage of this measure.

During the past two fiscal years, the SRS Child Support Enforcement Program has successfully established paternity for 5,324 children. These children are now able to look to both parents for personal and financial support; to draw upon normal benefits of the parent-child relationship such as insurance and social security; and to have access to their complete family medical history.

The Parentage Act has provided a good procedural framework for these paternity proceedings, but experience has revealed areas where the act needs to be strengthened. While SRS favors House Bill 2004 as a whole, the proposal concerning challenges to blood test results is the most urgently needed and would quickly improve the coordination and completion of SRS paternity cases. The remaining provisions are also favored by SRS because they would encourage the prompt and orderly conduct of trials and would provide guidance in identifying necessary parties to the action.

As it now stands, a party wishing to challenge blood test results may wait until just 20 days before trial to notify the other party about the challenge. When an alleged father does not promptly object to test results, SRS must arrange at the eleventh hour for expert witnesses to appear and testify on behalf of the mother and child. In the majority of SRS' cases an expert must fly in from out of state, adding to the complications of scheduling and transportation.

It has been necessary to postpone several trials in SRS cases because the expert could not be available on the original trial date. Fortunately the courts have been very understanding of this dilemma and have been willing to grant reasonable continuances. Such postponements, however, make court administration more difficult and frustrate the parties' desire for a prompt resolution. Furthermore, SRS must satisfy federal time standards for completing court actions, once initiated, and every delayed trial increases the risk that those time standards will not be met.

As a general rule, both parties can tell immediately whether they agree with the test results or not. Shifting the deadline for challenging the results to 20 days following their receipt deprives no one of a reasonable opportunity to investigate and raise objections. It is a simple and fair way to relieve the problems inherent in last minute challenges to the results.

Fiscal Impact. It is estimated that passage of House Bill 2004 would save SRS $13,305 per year by improving the efficiency of legal staff and eliminating delays in trials. To the extent that SRS risks federal penalties for delayed resolution of cases, penalties ranging from $670,000 to $78,000,000 per year would be avoided.

Jamie L. Corkhill
Child Support Enforcement
296-3237

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Kansas Psychiatric Society

1259 Pembroke Lane
Topeka, KS 66604
Telephone: (913) 232-5985
or (913) 235-3619

April 1, 1991

TO: Senate Judiciary Committee

FROM: Kansas Psychiatric Society Chip Wheelen

SUBJECT: House Bill 2005; Children's Rights

Thank you for this opportunity to express our support for HB 2005 which would require that the court consider the opinion of a licensed health care professional in proceedings regarding termination of parental rights. You may recall that a similar bill was passed last year by the Senate 39-1. That bill was considered by the House Judiciary Committee very late in the Session and was recommended for passage as amended. Because of other controversial legislation on the House calendar, that bill did not come up on general orders of the House until the day after second house deadline and was, therefore, stricken from the calendar.

During the 1990 interim, the Special Committee on Judiciary studied issues surrounding child support and child custody in proposal no. 15. At the request of the KPS, HB 2005 was recommended by the Special Committee on Judiciary.

Because of opposition expressed by the Kansas County and District Attorneys Association, the House Judiciary Chairman referred this bill to a subcommittee consisting of two former county prosecutors and a former District Court Judge. The language that you see in HB 2005 as amended by the House Committee is the product of that subcommittee's work. In spite of the fact that the supplemental note on HB 2005 makes no mention of our support for the bill but does mention the opposition of the County and District Attorneys, it was passed by the House unanimously.

We respectfully request that you recommend HB 2005 for passage. Thank you for your consideration.

/cb

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Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Opposition to

House Bill 2005

The Kansas County and District Attorneys Association opposed House Bill No. 2005, in its original form, on the grounds that it was a broad stroke which would have diluted the requirements for admission of expert testimony into evidence.

While the bill is intended to assist those involved in protecting children; as written, it would have made no requirement that the person licensed to practice medicine or surgery have training or education upon which to base their opinion; nor was there any specific requirement that they be familiar with the child or children in question. Further, the bill gave no authority for the physician or surgeon to give their opinion that the child's physical, mental, or emotional needs would not be better served if parental rights were terminated. The provisions of the bill contravened K.S.A. 60-456(b), which requires that a witness testifying as an expert must base their opinion on facts or data that are known to the witness, and within the scope of the witness' special knowledge, experience or training. If testifying as a lay witness, opinions are generally excluded, except under the specific authority of 60-456(a), which requires a judge to find that the opinion is rationally based on the perception of the witness, and that the opinion is helpful to a clearer understanding of the witness' testimony. Our concern was due to the fact that in the area of child abuse, the reliance on expert testimony is extremely important. The use of so-called "professional experts" in this area, especially on the part of criminal defendants, is a growing phenomena. Reducing established qualifications for admitting such testimony, even for the limited purpose of termination of parental rights, serves no worthwhile purpose in assisting a court to reach a decision that has such a radical effect on children and their families.

As amended by the House Judiciary Committee, the bill at least requires evidence, rather than a statement, which presumably is subject to cross examination; and, while not adopting the statutory requirements of K.S.A. 60-456, at least it now contains the K.S.A. 60-419 requirements of knowledge and experience. As amended, the bill satisfies KCDAA's major concerns. It does, however, alter general, and time-tested, evidentiary requirements, to meet a specific purpose; and makes an evidentiary decision mandatory, rather than a matter of judicial discretion.

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HB 2006

PROPONET

My name is Keith Kentch. I am a private citizen and also serve as a non-custodial parent on the board of KCSEA. I would like to thank you for hearing my testimony concerning HB2006.

Kansas Statute 79-2958, in brief, 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 fulfilled, therefore this statute is not in conjunction with Kansas Statute 24-497.

Kansas Statute 24-497 has allowed certain counties to reap huge profits in the past and present. EXAMPLE

1) Shawnee County 1986-1989 approximately $242,000
2) Wyandotte County 1989 alone $161,429.01
3) Sedgewick County wouldn't give me the amounts, but does charge the full 5%

In the spring of 1990, Shawnee County lowered the fee from 4% to 2½%, even with this reduction a $40,000 profit was earned for the general fund of Shawnee County.

While additional taxes are of great concern, I do not feel that children receiving child support should be taxed. Children do not earn an income, but yet as the statue is now, they are taxed on support money which has already been taxed at all levels.

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This amended bill only solves part of the current problem. It would still allow the fee to be increased to 5%, at any time deemed neccessary by the administrative judge, to cover additional expenses of the trustee's office. This still has the potential to create a windfall for the Trustee's Office, and quite possibly could create unneccessary spending just because the money is available.

We continue to pass laws that increase child support, and to aide 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 1-2% of rearage support collected. So I ask you to consider when reviewing this bill for further amendment, will the additional money in the trustee's office be spent for an increase in collection, or just to ease someone's workload? The fee charged should not create an overage amount large enough to possibly be misused.

I also think it is important to mention that some duplications in services do occur between the Clerk of the District Court, SRS, and the Trustee's Office. While HB2006 is an improvement over present conditions, I hope that it does not create an open-end expense account for the Trustee's Office.

In conclusion I fully recommend passage of this bill, with possible amendments in the area of how overage money is to be spent and how much can be charged for collection. Again I thank you and encourage you to act positively for the children of Kansas.

5-3/3

House Bill No. 2006
Senate Judiciary Committee
April 1, 1991

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear before you today to testify on House Bill No. 2006, an act concerning child support enforcement and court trustee funding.

As you are aware, this bill was requested by the Special Interim Committee on Judiciary to insure that county general funds would not profit from fees charged to operate court trustee programs, and to keep fees as low as possible so that child support recipients would not be unduly burdened. I testified in support of this bill before the House Judiciary Committee. The bill before you was amended by the House Judiciary Committee.

As our office and some of the court trustee programs reviewed the amended bill, we identified three issues that we think need additional consideration before final language is adopted.

First, court trustee programs receive federal administrative reimbursement funds and federal incentive monies for their efforts on the IV-D cases referred to them by the Department of Social and Rehabilitation Services (SRS). If a court trustee operations fund is established, the statute should be clear that the federal administrative reimbursement and federal incentive monies should be paid to the court trustee operations fund along with any court trustee fees.

Second, the bill as currently drafted technically violates the cash-basis law (K.S.A. 10-1112, et seq.). The bill makes no provision for a transition from the county general fund to the special revenue fund. As such, pay warrants dated January 1, 1992 would be drawn on a fund that has no money in it. Currently, the start-up costs, operations, and expansion costs of court trustee programs are paid out of the county general fund and then subsequently recovered through the fees and federal reimbursement. (See K.S.A. 23-499.) With the ability to fund operations from the county general fund until an operation becomes self-supporting, new programs have been established and existing programs have been expanded. Without a provision for

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transferring funds from the county general fund to the special revenue fund, we have a concern that there could be an interruption of existing services and a barrier created to the establishment of new court trustee programs and the expansion of existing programs.

Third, a concern has been raised that the specific language added by the House Judiciary Committee which allows options for the court trustee operations fund to be created in the district court of each county (lines 24 and 25 of page 1) and for expenditures to be paid by the administrative judge (lines 8 and 9 of page 2 and lines 26 - 30 of page 2) places the district court in the role of the employer. We do not have a problem with the concept behind the amendments made by the House Judiciary Committee, but we do have a concern over the specific language. The provisions of the Kansas statutes enacted as part of court unification make it extremely clear that administrative judges are to hire and supervise court trustee employees and to recommend budgets, but that county commissions are to act as employers for the purposes of paying court employees who are not paid by the state. (See K.S.A. 20-162, 20-348, 20-349, 20-358, and 20-359.) A concern has been raised that the bill as drafted would allow a county commission to delegate employer responsibilities, such as withholding and paying taxes and providing fringe benefits, to an administrative judge. Placing an administrative judge in the role of the employer would only duplicate existing county government services and increase the cost of court trustee services.

As you work this bill, we would ask that you consider these three issues.

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House Bill 2006
April 1, 1991

Testimony of Peggy A. Elliott
Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to testify on House Bill 2006. I appear in general support of the basic thrust of this legislative proposal. However, I would ask that you amend the House version of this bill in one area. With your permission, I would like to briefly state my basis for this request.

Section 1. Establishing a Court Trustee's Operation Fund in each county or district where an office of the Court Trustee has been established is a sound provision. Any revenues due the office, whether from fees or from providing IV-D services under the federal IV-D program, should be segregated and placed in a fund separate from the county general fund. These funds should be used only for providing for better services in the collection and enforcement of support.

As most of you may know, the Johnson County Court Trustee's office was the first such office established in the state of Kansas. Judge Harold Riggs and Donald C. Amrein had the foresight to establish a separate fund for this office from the very beginning. Because of their planning and foresight in keeping these funds separate and only used to up-grade the office, the Johnson County District Court Trustee's office has been allowed to grow and to consistently provide better enforcement services and yet do this by charging the lowest fee charged by a Trustee's office in Kansas. From the beginning this office has never charged more than 2%. This figure has been reduced through the years by caps on the total amount which the office would retain in each month. Finally on January 1, 1990, the fee was further reduced to 1 and 1/2% with a cap of $11.25. All of this has been done by the authorization of the District Judges and particularly the Administrative Judge.

It is my belief that the bill you are considering today should give the authority to administer the Court Trustee Operation Fund to the Administrative Judge of the district in which the

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office is located. K.S.A. 23-494 gives the judges in each district the authority to establish such an office. K.S.A 23-497 as well as this bill before you gives the Administrative Judge the authority to determine the compensation to be paid the Court Trustee. H.B. 2006 further provides that the Administrative Judge shall fix the annual budget of the office and determine the fee to be charged. It is clearly evident that you intend the judges of each district and particularly the Administrative Judge to be active in the Court Trustee's financial matters. It is for this reason that I believe the judges and not the Board of County Commissioners should make the decision as to where the Court Trustee Operations fund should be located.

If your intent in giving the County Commissioners the authority to decide where the fund should be located is based on the thought that they would provide a check on the funds, I believe you should be made aware of the audits already made on Court Trustee funds. In Johnson County the county audits our office annually. Any misplaced funds or mis-used funds would quickly come to his attention. Further, each Court Trustee's office goes through a comprehensive audit approximately each two years by an SRS auditor who thoroughly audits all expenditures of IV-D funds. Any thought that the judges, or the Administrative Judge, could mis-use Court Trustee funds, even if they so desired, should be laid to rest.

The other factor, which I believe the Office of Judicial Administration holds, is that if the district judges, or the Administrative Judge, have authority over this fund that it will place them in the position of being the employer of the Court Trustee, thus making all of the Court Trustee staff state employees. I believe that K.S.A 23-4,117 states quite clearly that Court Trustee personnel "shall be state employees paid by county general funds." It further states that "(T)the provisions of the Kansas county personnel rules, except for pay and classification plans, shall apply to subcontractor employees." "Subcontractors" has been defined earlier in the statute to mean district courts, including court trustees. Therefore, court trustee personnel are already state employees except for pay and classification.

In conclusion, I urge you to approve this piece of legislation with the amendment that the district court, and not the Board of County Commissioners, have the authority to decide where

the Court Trustee Operation fund should be located. This system has worked very well in Johnson County for over 18 years making this office the leader in child support enforcement in the state. The old addage, if it ain't broke, don't fix it, surely applies here.

Respectfully submitted,

Peggy A. Elliott

Peggy A. Elliott,
Court Trustee

7-3/3

JUDICIAL COUNCIL TESTIMONY ON H.B. 2100
SENATE JUDICIARY COMMITTEE
April 1, 1991

1991 House Bill No. 2100 amends K.S.A. 1990 Supp. 59-2136 and was introduced at the request of the Family Law Advisory Committee of 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, as introduced, was 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. However, the House Judiciary Committee amended subsection (d), which covers most stepparent adoptions, to make failure to pay support a matter the court "may take into account" in determining whether there has been a failure to assume parental duties for two 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, as introduced, was 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 was not the intent of the proposal that missing a few child support payments should eliminate the need for a parent's consent. The proposal attempted to give some flexibility to the courts and to place some limitations on use of the criterion by

Senate Judiciary Committee
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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 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 16 through 19 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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