

Approved

Date

3/3/92

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~ p.m. on March 4, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives Allen and Carmody who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

State Representative Judith Macy
Kay Farley, Office of Judicial Administration
Jim Robertson, S.R.S.
Peggy Elliott, Johnson County Court Trustee
Brian Farley, Kansas Children Support Enforcement Association
Phyllis Woolard, Association for Children for the Enforcement of Support
Bob Woolard, Shawnee, Kansas
Audrey Magana, Geary County Court Trustee

The chairman called the meeting to order.

Hearings were opened on HB 3055, orders of support payments during protection from abuse proceedings, HB 3056, child support/maintenance exempt from garnishment, HB 2855, contempt in child support enforcement proceedings court may restrict driving privileges and SB 529, revivor of dormant judgments for child support or maintenance.

State Representative Judith Macy testified in favor of all four bills. (Attachment #1)

Kay Farley, Office of Judicial Administration, testified in favor of each bill. (Attachments #2, #3 and #4). She answered committee members questions.

Consideration of HB 3054 and HB 3044 were taken up by the committee. Rep. Everhart made a conceptual motion to amend HB 3054 on page 1, line 38 by striking "10" and by amending language in KSA 60-3303. Rep. Pauls seconded the motion. Motion carried.

Rep. Everhart moved to report HB 3054 as amended favorably for passage. Rep. Hochhauser seconded the motion. Motion carried.

Rep. Everhart moved to pass HB 3044 favorably for passage. Rep. Macy seconded the motion.

Rep. Snowbarger made a substitute conceptual motion to amend HB 3044 on page 2, line 34 to prohibit patient's attorney from contacting the physicians also. Committee discussion was held. Motion failed.

It was noted that a Reno County case referred to by Rep. O'Neal during committee discussion was not heard by Judge Smith.

Rep. O'Neal made a substitute motion to table HB 3044. Rep. Rock seconded the motion. Motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 4, 1992.

Representative Everhart withdrew her motion with consent of Rep. Macy.

Rep. Everhart moved to reconsider Snowbarger's motion. Rep. Hochhauser seconded the motion. Motion carried. Committee discussion followed.

Rep. Vancrum made a substitute motion to limit the bill to treating physicians as in Snowbarger's proposed amendment. Rep. Snowbarger seconded the motion. Motion failed.

Rep. Everhart made a substitute motion to report HB 3044 favorably for passage. Rep. Pauls seconded the motion. Motion carried. Representatives O'Neal, Snowbarger and Scott requested to be recorded as voting No on the motion.

Hearings on HB 3055, HB 3056, HB 2855 and SB 529 were resumed.

Jim Robertson, SRS Child Support Enforcement, testified in favor of SB 529. (Attachment #5)

Peggy Elliott, Johnson County Court Trustee, testified in favor of all four bills. (Attachment #6) She submitted written testimony from Michelle Staley, Johnson County ACES, (Attachment #7) and Herbert Walton, Administrative Judge, 10th Judicial District, (Attachment #8) in favor of the bills. She answered committee members questions.

Brian Farley, Kansas Child Support Enforcement Association, testified in favor of all four bills. (Attachment #9) He supported amendments submitted by Kay Farley.

Phyllis Woolard, Association for Children for the Enforcement of Support, testified in favor of all four bills. (Attachment #10)

Bob Woolard, Shawnee, Kansas, testified in favor of the bills. (Attachment #11) He answered committee members questions.

Audrey Magana, Geary County Court Trustee, supported all four bills in their present form, but said he also supported Farley's requested amendments.

Representative Hochhauser moved to adopt the amendments suggested by Office of Judicial Administration to HB 3055 and HB 3056. Rep. Macy seconded the motion. Discussion followed.

Rep. Snowbarger made a substitute motion to amend HB 3055 and HB 3056 to add "unless waived by debtor" along with the Judicial Administration amendments. Rep. Hochhauser seconded the motion. Motion carried.

Rep. Macy moved to pass HB 3055 as amended, HB 3056 as amended, HB 2855 and SB 529 favorably for passage. Rep. Pauls seconded the motion. Motion carried.

Meeting adjourned at 5:10 P.M.

JUDITH K. MACY
REPRESENTATIVE, FORTY-THIRD DISTRICT
JOHNSON & DOUGLAS COUNTIES
P.O. BOX 572
DESOTO, KANSAS 66018



TOPEKA

HOUSE OF
REPRESENTATIVES

March 4, 1992

Testimony before House Judiciary Committee

HB 3055, 3056, 2855 and SB 529

Judith K. Macy

COMMITTEE ASSIGNMENTS
VICE-CHAIR: ELECTIONS
MEMBER: JUDICIARY
LOCAL GOVERNMENT
PENSIONS, INVESTMENTS AND
BENEFITS

Members of the Committee, thank you for allowing me to testify on the bills before us today dealing with court ordered support.

I would like to lend my support to these bills and encourage you to give them your favorable consideration.

In my practice as an attorney, I frequently represent clients who have found our system of court ordered support woefully inept.

While these bills will not address the myriad of problems in our legal system, I believe they are a beginning point in offering a small measure of protection for the recipient of court ordered support.

Experts in the field of support enforcement will testify on these bills with regard to their specific application. In the interest of time, I would ask that you address your questions to them, and I will respond to questions as they arise when the committee works the bill.

I would appreciate your support on these bills and would ask that you pass them out of committee so that we may continue to address our concerns in the area of court ordered support.

HJC-92
3-4-92
#1

HOUSE BILL No. 3055
House Judiciary Committee
March 4, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Representative Solbach and members of the committee:

I am pleased to be here today to discuss 1992 House Bill 3055 with you.

This bill amends the statutes concerning protection from abuse proceedings relating to support payments.

As we understand it, this bill was introduced to reconcile conflicting language within the statute.

The protection from abuse proceeding is to be used for short term relief, not as an alternative to divorce. Consequently, we would like for the bill language to be modified to allow for the support orders to be issued for a period of time not to exceed one year.

I understand that Representative Macy has a balloon that would amend the language of the bill. I recommend passage of this bill with Representative Macy's amendments.

Thank you for the opportunity to discuss HB 3055 with you.

HJC
3-4-92
#2
182

HOUSE BILL No. 3055

By Committee on Judiciary

2-18

Handwritten notes:
2-18
H.B. 3055
J.S.H.

8 AN ACT concerning protection from abuse proceedings; relating to
9 support payments ordered thereunder; amending K.S.A. 1991
10 Supp. 60-3107 and repealing the existing section.
11

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

13 Section 1. K.S.A. 1991 Supp. 60-3107 is hereby amended to read
14 as follows: 60-3107. (a) The court shall be empowered to approve
15 any consent agreement to bring about a cessation of abuse of the
16 plaintiff or minor children or grant any of the following orders:

17 (1) Restraining the parties from abusing, molesting or interfering
18 with the privacy or rights of each other or of any minor children of
19 the parties. Such order shall contain a statement that if such order
20 is violated, such violation may constitute assault as provided in
21 K.S.A. 21-3408, and amendments thereto, or battery as provided in
22 K.S.A. 21-3412, and amendments thereto.

23 (2) Granting possession of the residence or household to a party
24 to the exclusion of the other party, and further restraining the party
25 not granted possession from entering or remaining upon or in such
26 residence or household, subject to the limitation of subsection (c).
27 Such order shall contain a statement that if such order is violated,
28 such violation shall constitute criminal trespass as provided in sub-
29 section (c) of K.S.A. 21-3721, and amendments thereto.

30 (3) Requiring a party to provide suitable, alternate housing for
31 such party's spouse and any minor children of the parties.

32 (4) Awarding temporary custody and establishing temporary vis-
33 itation rights with regard to minor children.

34 (5) Ordering a law enforcement officer to evict a party from the
35 residence or household.

36 (6) Ordering support payments by a party for the support of a
37 party's minor child or a party's spouse. Such support payments shall
38 ~~expire six months one year after the date of issuance.~~ On the motion
39 of the plaintiff, the court may extend the effect of such order ~~an~~
40 ~~for one additional six months year.~~

41 (7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of
the parties and ordering a law enforcement officer to assist in securing

orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year.

twelve months.

HOUSE BILL No. 3056
House Judiciary Committee
March 4, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Representative Solbach and members of the committee:

I am pleased to be here today to discuss 1992 House Bill 3056 with you.

This bill amends a statute which limits the application of garnishment process.

The Office of Judicial Administration and the District Court Trustees support this bill. We have had several instances in which the Clerks of the District Court or District Court Trustee has been served with a garnishment to attach support payments as payment to other creditors. As the support payments are to provide for the needs of minor children, we would like to see this money protected from other creditors.

Additionally, this bill would provide some protection for the interests of the obligors in insuring that the support payments made by the obligors will be used for the support of their children and not attached by a creditor for other purposes.

I understand that Representative Macy will be presenting a balloon that will clarify the intent of the bill. I recommend passage of this bill with Representative Macy's amendments.

Thank you for the opportunity to discuss HB 3056 with you.

HJC
3-4-92
#3
183

HOUSE BILL No. 3056

By Committee on Judiciary

2-18

8 AN ACT concerning civil procedure; relating to the garnishment
9 process; amending K.S.A. 1991 Supp. 60-2308 and repealing the
10 existing section.

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

13 Section 1. K.S.A. 1991 Supp. 60-2308 is hereby amended to read
14 as follows: 60-2308. (a) Money received by any debtor as pensioner
15 of the United States within three months next preceding the issuing
16 of an execution, or attachment, or garnishment process, cannot be
17 applied to the payment of the debts of such pensioner when it is
18 made to appear by the affidavit of the debtor or otherwise that such
19 pension money is necessary for the maintenance of the debtor's
20 support or a family support wholly or in part by the pension money.
21 The filing of the affidavit by the debtor, or making proof as above
22 provided, shall be *prima facie* evidence, and it shall be the duty of
23 the court in which such proceeding is pending to release all moneys
24 held by such attachment or garnishment process, immediately upon
25 the filing of such affidavit, or the making of such proof.

26 (b) Except as provided in subsection (c), any money or other
27 assets payable to a participant or beneficiary from, or any interest
28 of any participant or beneficiary in, a retirement plan which is qual-
29 ified under sections 401(a), 403(a), 403(b), 408 or 409 of the federal
30 internal revenue code of 1954, as amended, shall be exempt from
31 any and all claims of creditors of the beneficiary or participant. Any
32 such plan shall be conclusively presumed to be a spendthrift trust
33 under these statutes and the common law of the state. All records
34 of the debtor concerning such plan or arrangement and of the plan
35 concerning the debtor's participation in the plan or arrangement shall
36 be exempt from the subpoena process.

37 (c) Any plan or arrangement described in subsection (b) shall not
38 be exempt from the claims of an alternate payee under a qualified
39 domestic relations order. However, the interest of any and all al-
40 ternate payees under a qualified domestic relations order shall be
41 exempt from any and all claims of any creditor, other than the state
42 department of social and rehabilitation services, of the alternate
43 payee. As used in this subsection, the terms "alternate payee" and

Handwritten notes in the top right corner, including "Page 2" and "H-3056".

Senate Bill No. 529
House Judiciary Committee
March 4, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Representative Solbach and members of the committee:

I am pleased to be here today to discuss 1992 Senate Bill 529 with you.

This bill amends provisions of chapter 60 of the *Kansas Statutes Annotated* which pertain to judgments which become dormant and how such dormant judgments may be revived.

In 1985 these statutes were amended to include income withholding proceedings as an event which would revive a judgment in an effort to remedy the effect of *Dallas v. Dallas* 236 K. 92, a 1984 case which held that the revivor statute had no exception for child support judgments. The amendments contained in Senate Bill 529 are a similar effort to overcome the effects of *Cyr v. Cyr* 249 K. 94, a case decided in 1991. *Cyr* concluded that a citation for contempt of court in a child support case is not one of the proceedings enumerated in K.S.A. 60-2403 for keeping a judgment alive.

One of the problems faced by District Court Trustees in their efforts to enforce child support obligations is trying to keep child support judgments alive. Some of the cases which are the most difficult to enforce the support obligations are cases in which the obligor has moved to another state or in which contempt proceedings are the only enforcement tool available. Currently these enforcement actions can not be used to revive a support judgment.

The amendments set out in this bill are intended to broaden the events which will revive a support judgment by listing all the events normally used to enforce child support judgments.

This bill will greatly assist District Court Trustees in their support enforcement efforts. I recommend this bill for passage.

Thank you for the opportunity to discuss this matter with you today.

HJC
3-4-92
Attach #4
1 of 2

HOUSE BILL No. 2855
House Judiciary Committee
March 4, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Representative Solbach and members of the committee:

I am pleased to be here today to discuss 1992 House Bill 2855 with you.

This bill amends statutes relating to contempt of court and adds a sentencing alternative in child support enforcement proceedings.

The Office of Judicial Administration and the District Court Trustees strongly support this bill. As a rule, contempt is only used as an enforcement tool in child support enforcement cases for obligors who are unemployed or self-employed. Realistically, once the obligor is found in contempt, the judge has few sentencing alternatives. Most often, the obligor is admonished to pay the support and/or actively seek employment. The case is then set for a review to monitor the obligor's compliance with the court's order. In situations where the obligor is repeatedly brought before the court on contempt proceedings, judges will sometimes order the obligor time in the county jail. However, because of limited space in county jails and a federal appellate decision that limits this as a sentencing alternative, this alternative can not be extensively used.

It has been our experience that obligors see these contempt hearings as inconvenient and a hassle, but for many obligors they do not have the desired effect of bringing the obligor into compliance with the order of the court to pay support. We believe that restricting an obligor's driving privileges will get the attention of nonsupporting parents.

We believe that the restriction of driving privileges will provide a strong incentive for obligors to pay their child support. This bill will give the judges an effective sentencing alternative.

We recommend passage of this bill.

Thank you for the opportunity to discuss HB 2855 with you.

HJC
3-4-92
#4
206

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

Senate Bill 529

Before the House Judiciary Committee
March 4, 1992

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular, adequate support payments and enforcing past due obligations. From that perspective, SRS favors passage of Senate Bill 529.

Each installment of support is a separate money judgment when due and unpaid. Over the years, complex rules and exceptions have developed for identifying dormant installments, which must be revived before they may be enforced. By expanding the range of actions preventing dormancy, this proposal would make it less likely for child support to become temporarily unenforceable and would reduce the administrative, legal, and judicial costs associated with dormancy.

As the law now stands many attorneys periodically request general execution from the courts, even where no assets exist, purely to prevent older support installments from going dormant. This unproductive paperwork satisfies the technical requirements of the statute, but the expense is a burden to both the courts and SRS -- usually without the debtor even knowing that enforcement has been attempted. SB 529 would go a long way toward eliminating this waste.

The purpose of dormancy is to allow a debtor to clear the record of stale debts the creditor shows no intention of pursuing. Enforcement actions, such as contempt and interstate proceedings, clearly warn the debtor of the intention to collect unpaid support. Unfortunately, dormancy is not prevented by either of these well-known enforcement actions. If the support creditor initiates additional action just to prevent dormancy, the debtor gains little by way of notice and often resents what seems like overkill by the creditor.

Fiscal Impact. The complexity of the rules surrounding dormancy adds to training costs for staff, increases the time required for checking court records, and increases the risk of errors in identifying dormant installments. Passage of this bill would reduce the time SRS program and legal staff must devote to this particular technicality of the law, freeing them for more useful, productive tasks. It is estimated that passage of Senate Bill 529 would permit cost avoidance of approximately \$79,092 per year (\$26,891 State's share, after subtracting IV-D federal financial participation) through the more efficient use of staff.

For these reasons, SRS urges that Senate Bill 529 be recommended for passage.

For additional information, please contact:

Jamie L. Corkhill
Child Support Enforcement
296-3237

HJC
3-4-92
#5
Attach

Testimony in Support of Child Support Legislation
Judiciary Committee
March 4, 1992

Peggy A. Elliott
District Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today in support of some very important child support legislation.

As the District Court Trustee for the Tenth Judicial District, our office is charged with the responsibility of collection, disbursement and enforcement of child support and maintenance in approximately 9,000 open cases. In 1991 our office collected over \$33 million dollars and appeared in over 5,000 court hearings.

Background

It is no secret that the divorce rate has risen significantly in the last few years and that at the present time approximately one-half of all marriages fail. Add to this the number of out-of-wedlock births and it is not difficult to understand why the family structure is changing and why child support and maintenance has become such an important issue. In Kansas, as across the nation, these single-parent households (usually headed by mothers) are becoming the newest group living below the poverty line.

HJC
3-4-92
#6
10810

It has been estimated by the Office of Child Support Enforcement that in 1987 approximately 9.4 million women were entitled to child support but that only 5.6 million had orders requiring that child support be paid. Further, 50% of these either received no support at all or only partial support. The Kansas Special Committee on Children's Initiatives has set a goal of increasing child support collections in Kansas by 30% each year.

To reach this goal will require that the legislature enact laws which give child support enforcement agencies new and creative methods of enforcing court orders. These laws should provide for several alternative methods since no one enforcement procedure will work in every case. The payment of child support in some cases requires behavior modification, these laws should make the consequences of non-payment more onerous than the pain of paying.

H.B. 2855

One piece of legislation that would serve this purpose is H.B. 2855. This measure would allow a court to place restrictions on the obligor's driver's license after a finding of contempt in a child support enforcement proceeding. The state extends a driver's license as a privilege and not as a right under the doctrine of "super parent." Therefore the state can also impose restrictions.

This penalty should be viewed as just one more enforcement

HJC
3-4-92
#6
20710

tool. It is not be something to be used in every case where contempt is found, but only in certain specific cases where other enforcement sanctions have failed or are not appropriate, such as where the obligor is self employed and an income withholding order does not bring about the desired action. As is true with all laws which call for sanctions, sometimes the mere threat or the knowledge that the law is "on the books" will bring about cooperation. This proposal is not about how many driver's licenses that can be restricted, but how we can get an obligor to pay. There are ample safeguards to protect the obligor who is making a serious effort to comply with the court order. Again, this bill is only an additional enforcement tool to use if nothing else can get the obligor's attention. The number of obligors even meeting the threshold limits will be a very small percentage of the total cases being enforced. In Johnson County, less than 2% of obligors are found in contempt of court at any one time period. I further support this bill for the additional reasons:

1. Almost every obligor living in Kansas can be assumed to have a Kansas driver's license.
2. Restricting the driver's license will cut across all socioeconomic groups and will not discriminate against any one group or occupation.
3. Restricting driver's licenses will not be as

HJEC
3-4-92
#6
308 10

controversial as attempting to restrict professional licenses which several states have done.

4. Only one agency oversees the licensing of drivers while many agencies or departments issue professional licenses and there is already a procedure built in to restrict licenses. The Department of Motor vehicles is statewide and is computerized.

For those who would oppose this bill because "to take away a driver's license is to deprive an obligor of the ability to earn a living," I would submit that we are not talking about suspending a license, only restricting a license. This will still allow the obligor to drive back and forth to work - but not back and forth to the local tavern. It is common knowledge that some people drive without a valid license and I would just comment that some get caught, too.

H.B. 3055

This bill is really a clean-up bill for the protection of abuse statute, K.S.A. 1991 Supp. 60-3107. When this bill was first enacted, the order was only good for six months. It was later changed to provide for protection for one year but the order for child support was left at six months. I believe this was done inadvertently and should be corrected.

HJK
3-4-92
#6
4010

H.B. 3056

This legislation is very important for the protection of moneys intended for the use by the obligee as child support or alimony. I support the amendments to the bill which the OJA has proposed and are attached to my written testimony.

Our office has had two occasions this past year where garnishments have put these funds in jeopardy. On one occasion the attorney for the obligor and the attorney for the obligee's creditor came into our office together and we were first handed a check representing the last payment of alimony and then served with a garnishment by the other attorney. It was only because of a technicality that the office was able to avoid payment to the creditor. In the other case, the obligor was served with garnishment for the funds which he held to pay into our office for alimony. When he ignored the garnishment, a hearing was held and this office was subpoenaed to appear with the payment record for this case. The court determined that the alimony funds should be treated as income and ordered us to make distribution of each payment, 25% to the creditor and 75% to the obligee.

While neither of these cases sought to garnish child support, there is no statute or case law which protects either child support or maintenance. Although public opinion is stronger for the protection of child support, there are also strong arguments in

HJC
3-4-92
#6
50710

favor of protecting both. In bankruptcy, neither can be dismissed. In our statutes dealing with garnishments, both are given higher priority by being able to garnish a higher percentage of disposable income than the normal creditor. There is also the argument that in some cases because of income tax purposes, both amounts should be considered as one support payment, since some parties desire to have low child support and a higher amount for maintenance because maintenance is tax deductible for the Obligor.

I urge you to provide for the protection these funds. Child support enforcement offices and Clerk's of the District Court are particularly vulnerable to being garnished since Kansas law requires that these payments be made to these public agencies unless good cause be shown. We are "sitting ducks" ready to be picked off by clever creditors.

S.B. 529

All of the metropolitan trustee offices have a great many cases to monitor for various infractions. It is very easy to overlook the dormancy factor even in cases where we are actively pursuing contempt of court and regularly bringing the obligor in for court hearings. We need this bill in order to protect obligees and SRS from letting judgments go dormant and becoming uncollectible. In some cases where the obligor is out of state, we

HJC
3-4-92
#6
608/10

cannot take any of the affirmative actions allowed in K.S.A. 1991 Supp. 60-2308 to extend the judgement because we cannot get proper service. By adding contempt actions, URESA proceedings and Interstate Income Withholding to this list that extends the life of the judgments, will result in a more equitable statute.

Conclusion

Thank you for allowing me the privilege of testifying for these bills. It is only when laws are strengthened and when public opinion is changed to reflect the seriousness of not being financially responsible for one's own children, will the taxpayers get any significant relief from the ever increasing welfare problem. We must devise ways to ensure that these children get the support which has been ordered for their well-being. Priorities need to be adjusted to make the payment of child support more important than car payments.

HJC
3-4-92
#6
7810

HOUSE BILL No. 3055

By Committee on Judiciary

2-18

8 AN ACT concerning protection from abuse proceedings; relating to
9 support payments ordered thereunder; amending K.S.A. 1991
10 Supp. 60-3107 and repealing the existing section.
11

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

13 Section 1. K.S.A. 1991 Supp. 60-3107 is hereby amended to read
14 as follows: 60-3107. (a) The court shall be empowered to approve
15 any consent agreement to bring about a cessation of abuse of the
16 plaintiff or minor children or grant any of the following orders:

17 (1) Restraining the parties from abusing, molesting or interfering
18 with the privacy or rights of each other or of any minor children of
19 the parties. Such order shall contain a statement that if such order
20 is violated, such violation may constitute assault as provided in
21 K.S.A. 21-3408, and amendments thereto, or battery as provided in
22 K.S.A. 21-3412, and amendments thereto.

23 (2) Granting possession of the residence or household to a party
24 to the exclusion of the other party, and further restraining the party
25 not granted possession from entering or remaining upon or in such
26 residence or household, subject to the limitation of subsection (c).
27 Such order shall contain a statement that if such order is violated,
28 such violation shall constitute criminal trespass as provided in sub-
29 section (c) of K.S.A. 21-3721, and amendments thereto.

30 (3) Requiring a party to provide suitable, alternate housing for
31 such party's spouse and any minor children of the parties.

32 (4) Awarding temporary custody and establishing temporary vis-
33 itation rights with regard to minor children.

34 (5) Ordering a law enforcement officer to evict a party from the
35 residence or household.

36 (6) Ordering support payments by a party for the support of a
37 party's minor child or a party's spouse. Such support payments shall
38 ~~expire six months one year after the date of issuance.~~ On the motion
39 of the plaintiff, the court may extend the effect of such order as
40 ~~for one additional six months year.~~

41 (7) Awarding costs and attorney fees to either party.

42 (8) Making provision for the possession of personal property of
43 the parties and ordering a law enforcement officer to assist in securing

orders shall remain in effect until modified
or dismissed by the court or until expiration
and shall be for a fixed period of time not to
exceed one year.

twelve months.

Handwritten notes and signatures in the bottom left corner, including the number 1009 and various initials.

HOUSE BILL No. 3056

By Committee on Judiciary

2-18

8 AN ACT concerning civil procedure; relating to the garnishment
9 process; amending K.S.A. 1991 Supp. 60-2308 and repealing the
10 existing section.
11

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

13 Section 1. K.S.A. 1991 Supp. 60-2308 is hereby amended to read
14 as follows: 60-2308. (a) Money received by any debtor as pensioner
15 of the United States within three months next preceding the issuing
16 of an execution, or attachment, or garnishment process, cannot be
17 applied to the payment of the debts of such pensioner when it is
18 made to appear by the affidavit of the debtor or otherwise that such
19 pension money is necessary for the maintenance of the debtor's
20 support or a family support wholly or in part by the pension money.
21 The filing of the affidavit by the debtor, or making proof as above
22 provided, shall be *prima facie* evidence, and it shall be the duty of
23 the court in which such proceeding is pending to release all moneys
24 held by such attachment or garnishment process, immediately upon
25 the filing of such affidavit, or the making of such proof.

26 (b) Except as provided in subsection (c), any money or other
27 assets payable to a participant or beneficiary from, or any interest
28 of any participant or beneficiary in, a retirement plan which is qual-
29 ified under sections 401(a), 403(a), 403(b), 408 or 409 of the federal
30 internal revenue code of 1954, as amended, shall be exempt from
31 any and all claims of creditors of the beneficiary or participant. Any
32 such plan shall be conclusively presumed to be a spendthrift trust
33 under these statutes and the common law of the state. All records
34 of the debtor concerning such plan or arrangement and of the plan
35 concerning the debtor's participation in the plan or arrangement shall
36 be exempt from the subpoena process.

37 (c) Any plan or arrangement described in subsection (b) shall not
38 be exempt from the claims of an alternate payee under a qualified
39 domestic relations order. However, the interest of any and all al-
40 ternate payees under a qualified domestic relations order shall be
41 exempt from any and all claims of any creditor, other than the state
42 department of social and rehabilitation services, of the alternate
43 payee. As used in this subsection, the terms "alternate payee" and

Handwritten notes: HJC, 3-4-93, 9810

1 "qualified domestic relations order" have the meaning ascribed to
2 them in section 414(p) of the federal internal revenue code of 1954,
3 as amended.

4 (d) The provisions of subsections (b) and (c) shall apply to any
5 proceeding which: (1) Is filed on or after July 1, 1986; or (2) was
6 filed on or after January 1, 1986, and is pending or on appeal July
7 1, 1986.

8 (e) Money received by the state department of social and re-
9 habilitation services, any clerk of a district court or a district court
10 trustee for the support of any person pursuant to a court order,
11 whether it be identified as child support, spousal support, alimony
12 or maintenance, shall be exempt from garnishment process. Money
13 being held by an obligor for payment into a clerk of the district
14 court office or a district court trustee's office for the support of any
15 person shall be exempt from garnishment process when such obligor
16 files an affidavit of intent to use such funds for the support of another
17 person. The filing of the affidavit by the obligor shall be prima facie
18 evidence, and it shall be the duty of the court in which such pro-
19 ceeding is pending to release all moneys held by such garnishment
20 process immediately upon the filing of such affidavit.

held

in connection with a court order.

execution, attachment or

21 A Sec. 2. K.S.A. 1991 Supp. 60-2308 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after
23 its publication in the statute book.

(f) Money received by or payable to any debtor pursuant to a court order for support shall also be exempt from execution, attachment or garnishment process and cannot be applied to the payment of the debts of the support obligee when it is made to appear by affidavit of the support obligee, support obligor or otherwise that such support money is necessary for the maintenance of the debtor's support or the support of the debtor's family wholly or in part. The filing of the affidavit by the support obligee, support obligor or otherwise or making proof as above provided, shall be prima facie evidence, and it shall be the duty of the court in which such proceeding is pending to release all moneys held by such attachment or garnishment process, immediately upon the filing of such affidavit or the making of such proof.

Handwritten notes: HSC, 3-4-92, 10/2/10

Please, for the sake of the children in Kansas, support the legislation pertaining to child support.

Restriction or suspension of a non-payers drivers license is a definite way to bring to the non-payers attention the severity of their action. Most judges are reluctant to place a non-payor in jail, so putting a restriction on their livelihood, as they have done to our children, will make them reconsider their decision not to pay. Such measures are not drastic when the welfare of a child is at stake. All methods for enforcing a court order for child support must be utilized.

The monies that legally and morally belong to our children have got to be protected also, that is why we need HB 3056 and SB 529.

Please consider, that by making it easier to secure child support money you are not only providing for the children of Kansas, but also putting money back into the child support enforcement program and the state.

We have got an epidemic situation on our hands by ignoring the plight of our children, and it will only get worse. A lot of the previously introduced child support legislation has died in prior legislative sessions, we cannot let this continue to happen.

We have got to put teeth into child support enforcement and collection, you can assist us by passing stringent child support statutes. There is nothing to lose and everything to gain.

Sincerely,

Michelle Staley
Michelle Staley
Jo. Co. ACES
The Association for
Children for Enforcement
of Support

HJC
3-2-92
Attach #7
1 of 2

Having been a single, head of household, custodial parent for a number of years, I am very familiar with the frustration of collecting child support. When you fail to receive child support, the bills you owe are late, which adds late charges to your account. Is this fair?

We, as a society need to be less concerned about the hardships placed on a non-custodial parent, when they are ordered to pay child support and refuse to do so.

Our main concern must be the health, welfare and future of our children.

Michelle Staley

HJC
3-2-92
#7
297

HOUSE JUDICIARY COMMITTEE
MARCH 4, 1992

TESTIMONY OF

HERBERT W. WALTON
ADMINISTRATIVE JUDGE
TENTH JUDICIAL DISTRICT

Distinguished members of the Kansas House. My name is Herbert W. Walton and I am the Administrative Judge of the Tenth Judicial District (Johnson County, Kansas). I further have the privilege of serving as Chairman of the Family Law Advisory Committee of the Kansas Judicial Council on Child Support Guidelines. I appear today to express my greatest enthusiasm for House Bills 2855, 3055, 3056 and Senate Bill 529. In my judgment, these proposed Bills will do a lot for the enforcement of child support in this state. With your permission, I would like to quickly review some of my concerns.

I would like to address House Bill 2855 first and hopefully will be able to address some concerns that many legislators may have about the far reaching effects of this proposed law. I am sure that many of you may feel that literally hundreds or even, thousands of Kansas residents will have their driving privileges suspended or restricted for non payment of child support. If you would look at the bill carefully, you will see that, only those

HJC
8-4-92
3-4-81
184

Obligors who have been found guilty of contempt by the Court, after a fair hearing and with counsel present, if so desired, who as a part of the sentence for contempt will have certain restrictions placed on their driver's license. I can assure you that these obligors will have had ample opportunity to make proposals for the payment of their child support before the Courts will restrict their driver's licenses.

However, there are some instances when nothing else will induce a recalcitrant parent into paying the support obligation. We are hopeful that for those individuals who are self employed or working for cash, that this may be what is needed to get enforcement, once and for all.

I believe that the Bill contains sufficient safeguards that this privilege would not be abused and would only be used to enforce child support payments from Obligors that have avoided the more common, usual methods of enforcement employed by the Court Trustees and SRS.

Next, I would like to address House Bill 3055, concerning the extension of time for child support payments arising out of protection from abuse actions. I am confident that this committee will correct the error which occurred when the protection from abuse order was extended from six months to twelve months, but inadvertently the support requirement was not extended and remains at six months. It makes little sense to have one order at twelve months and the other order at six months.

This change is needed so parties who are having difficulty

HJC
3-4-92
#8
2004

will have the additional time needed to try and reconcile and will not be forced into filing a separation petition. It has been this Court's experience that these PFA actions many times cut down on the number of divorce cases and many of the parties end up back together as a family unit. Also, a parent who has a PFA order entered always has the option to file a divorce proceeding, if that is desired.

Another bill up for consideration is House Bill 3056, concerning the garnishment process. I feel that this bill is strongly needed and I would encourage its passage for several reasons. First, by ordering support payments to be paid into a central office, such as the District Clerk, the Court Trustee or the SRS, this has given creditors and their attorneys a unfair advantage when it comes to collecting a debt owed by a party. They simply can make a trip to the courthouse, see when the Obligor makes his payments of support and file a garnishment on the agency that collects the support and wait for that agency to process the check and mail it to the creditor. This support is for the support of children or spouses and it is not to be used for the payment of debts to creditors. Our Trustee in this county had an instance where the Obligor was in concert with one of the Obligee's creditors and caused his child support check and the garnishment to arrive at the same time in the Court Trustee's office. It was only because of a legal technicality that the Trustee was able to defeat this garnishment, but if the same situation were to arise again, the Court Trustee would be placed in the position of a collection

HJC
3-4-92
#8
3064

agent for a creditor and will be forced to pay child support to a creditor and not to the Obligee unless this bill is passed. This is not a good situation and I am hopeful that the House will resolve this problem in favor of the children of the state of Kansas.

It is also necessary that Obligor's be protected from garnishment, so I strongly encourage you to recommend passage of this very important bill.

Another bill of which I recommend passage is Senate Bill 529, concerning the addition of contempt proceedings and URESA actions to the list of items that automatically extend the judgments and prevent them from becoming dormant.

It appears to me that the support enforcement procedures outlined in the bill, the proceedings in contempt, the URESA proceedings and the interstate income withholding orders, are all very logically situated and if this bill is passed, these actions will extend judgments for past due child support. The passage of this bill will greatly enhance the ability of our enforcement agencies in dealing with obligors who abandon their children and absent themselves from this state for long periods of time for the purpose of avoiding payment of their court ordered support.

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

HJC
3-4-92
#8
Hof 4



KANSAS CHILD SUPPORT ENFORCEMENT ASSOCIATION

March 4, 1992

Chairman John Solbach
Judiciary Committee Members
Kansas State House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Chairman Solbach:

The Kansas Child Support Enforcement Association (KCSEA) thanks the House Judiciary Committee for the opportunity to appear as proponent for the following items of legislation:

HB 3055 - brings length of temporary support orders in compliance with protection from abuse orders.

HB 3056 - exempts from garnishment support orders when funds collected by SRS and Court.

HB 2855 - provides authority to restrict driver's licenses in civil contempt proceedings related to child support.

SB 529 - broadens methods for preventing dormancy of child support arrearages.

KCSEA is a broad based non-profit organization whose membership is open to any individual with an interest in child support in the State of Kansas, including family law academicians, court clerks, SRS and Court Trustee employees and both custodial and non-custodial parents.

Sincerely,

Brian M. Farley
Board of Directors
Chairman, Legislative Committee

BMF:sh

HJC
3-4-92
#9

Shelli Woodard
Shawnee
Kansas

3-4-92

I have been a custodial parent for 13 years. I have had to work hard for that 13 years to obtain child support which was ordered for him to pay in our original divorce decree.

The absent parent in my case is now 9 years behind in child support. This amounts to nearly \$20,000. This money belongs & is due to my son. I believe it will be collected. But in the meantime it must be protected for him. We need your support on HB 3056 and SB 529 for that reason.

I am one custodial parent in thousands who has been strong enough to sustain the pain & stress of working 3 jobs while also working on collecting her child support. Many others

HJL
3-4-92
#10
1 of 2

do not have that kind of strength. These parents and all our children need your help. If we had laws that had more strength; it wouldn't take the entire length of one child's childhood to gain enforcement of support for expenses that need care for when they are young. Please support HB 2855 which will make enforcement easier.

As I am sure you are aware, approximately 25% of all orders for support are owner paid. This is certainly a sad lack of priority given to our children. Child support enforcement offices in our state must be given the tools in which to enforce support and existing laws must be strengthened. I urge you to give your support to these bills.

Thank you,

HJC
3-4-92
#10
2082

Hello - Members of the Congretional Committ
 My name is Bob Woolard, I am 14 yrs. old.
 I am a child who has been raised in a
 home effected by non-payment of child suppa
 My father divorced my mom when I was 1 yr.
 old. He promised to pay child support then
 but has not honored that promise. He
 has practically ignored my need for support
 as a growing kid.

He lives in a beatiful home and has \$100,000
 yearly income. I have several health problem
 that are going unattended because we
 don't have the money to pay for it. We
 can't even afford health insurance,
 that is legally the responsibility of
 my father. He does not provide any.

I've worked since I was 10 yrs. old; mowing
 yards + doing all kinds of odd-jobs. I
 have had to buy my own bicycle, my last
 2 yrs. worth of my own clothes and many
 other things that kids my age get from
 their parents. My mom would love to be
 able to do these things for her son
 but really can't afford to do so. She works
 3 jobs just to pay our rent, utilities,
 and basic expenses.

HJC
 3-4-92
 #11 ①
 1882

Our church has been very generous in providing groceries for us in the last 3-4 months which started in Nov. '91 when my mom was down with a broken foot.

I believe God has been very good to help provide for us through our friends. But the point here is my father should be helping us financially but does not.

Please pass laws that help us 200,000 kids in the State of Kansas that need your help.

Please support HB 3056,
HB 3055, HB 2855 and SB 529.

Bob Wooland
10218 Johnson Dr, #105
Shawnee, KS. 66203

THANK YOU,

Bob Wooland

HJC
3-4-92
#11
282 (2)