

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 31, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)
Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:
Pam Somerville, Kansas Auto/Car Dealers
Elwaine Pomeroy, Kansas Credit Attorneys' Association
Representative Candy Ruff
Juliene Maska, Victims Rights Coordinator, Office of the Attorney General
Jan Guthrie, Kansas Coalition Against Domestic Violence (KCADV)
Pam Pechanec, Northwest Kansas Coalition, Hays, Kansas, Family Shelter
Dorothy Halley, Safe House of Pittsburg
Laura Emery
Melissa Fiscus, Safe House, Pittsburg Kansas
Marilyn Ault, Battered Women Task Force, YWCA
Shelley Mann, SOS, Emporia
Maggie Hardie, Development Director, Safe Home, Johnson County
Dana Edwards
Debra Bates-Lamborn, Alliance in Levenworth
Greg DeBacker, National Congress of Fathers and Children
Joseph Ledbetter, National Congress of Fathers and Children
Phil Alquist, National Congress of Fathers and Children
Flora DeBacker
Orville Johnson

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

Bill introductions:

Senator Reynolds presented a bill proposal at the request of the Kansas Automobile Association and introduced Pam Somerville, Kansas Auto Dealers Association.

Ms Somerville explained that the requested bill would amend K.S.A. 8-2414, the cancellation, termination, and non-renewal section of the Dealer and Manufacturing Licensing Act. (Attachment 1)

Senator Emert requested a bill on behalf of the National Federation of Independent Businesses that would extend the filing time under current lien laws from 90 days to 180 days.

Elwaine Pomeroy, on behalf of the Kansas Credit Attorneys Association, requested the introduction of a bill extending the notice procedure to debtors in post judgment garnishment proceedings. Mr. Pomeroy stated that the current law is under challenge; the state would be in a very bad situation if banks and other creditors were not able to enforce their judgments by means of garnishments.

A motion was made by Senator Reynolds, second by Senator Vancrum to introduce all three of the requests as Committee bills. The motion carried.

SB 347--Court review of domestic violence in divorce, child custody and visitation proceedings.

Representative Candy Ruff addressed the Committee in support of **SB 347**. Representative Ruff related that professional experiences and experiences of a friend were her reasons for supporting **SB 347** and **HB 2465**. The conferee stated that **SB 347** would allow a judge to consider the issue of domestic violence at the time of divorce. This bill would allow for a period of time where there would be no contact with the abusive spouse. The judge could make a determination about the family's safety. The conferee stated that 75 to 90 percent of

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murders by spouses occur after the family is broken up. Representative Ruff concluded by stating that it is her belief that the bill is very strong in saying that when a judge considers domestic violence there has to be proof.

Jan Guthrie, Kansas Coalition Against Domestic Violence, testified in support of **SB 347** and referred the Committee's attention to KCSDV proposed amendments. The conferee discussed the proposed changes in the bill. The conferee called attention to the change regarding the use of mediation when domestic violence is an issue. (Attachment 2) An explanation of KCSDV proposed amendments to **SB 347** was provided. (Attachment 2)

Pam Pachanec, testified in support of **SB 347**. The conferee related her personal experiences regarding her divorce and harassment by her ex-husband after the divorce, as well as difficulties in receiving legal representation in subsequent custody hearings. Issues of child custody being used to control the abused spouse was discussed by the conferee. The conferee related problems that occurred in her case with the mediation process. The conferee urged the passage of **SB 347** in an effort to correct some of the problems she encountered. (Attachment 3)

Dorothy Halley, KCSDV Legislative Committee Chair, Safe House of Pittsburg testified in support of **SB 347**. The conferee related the history and purpose of Safe House, Inc. The conferee stated that the organization represents thirty domestic violence programs across Kansas with the purpose of ending domestic violence and protecting the children. The conferee stated that currently, Kansas law does not recognize that a presumption of joint custody is invalid where one parent has abused the family with violence, however, that is not the case in several other states. The conferee referred to an analysis of provisions included in other states' statutes as contained in her written testimony. The conferee stated that 75 percent of the domestic violence calls made to law enforcement occur after the battered spouse has separated from the abuser. Ms Halley stated that custody litigation becomes one more weapon for the batterer, and that mediation can be detrimental in those situations. The conferee stated that the issues addressed in **SB 347** are widespread. The conferee concluded by stating that **SB 347** can make a difference between a devastating judicial decision and one that protects victims and children. (Attachment 4)

Laura Emery spoke in favor of **SB 347** and related her personal experience with the process of mediation where domestic violence had been a factor during the marriage. The conferee stated that her personal experience with mediation was traumatic. The conferee stated that mediation in determining child custody was used by her ex-husband to control her after the divorce. The conferee stated that the mediator relinquished control of the meeting to her ex-husband. The conferee concluded by stating that mediation is detrimental to the parties involved, when there are issues of domestic violence. (Attachment 5)

Melissa Fiscus testified in support of **SB 347**. The conferee related her personal experiences in dealing with the judicial system as a domestic violence victim. The conferee stated that she had been in and out of child custody hearings with her abusive ex-husband for approximately five years. The conferee explained that the judge in the divorce case considered the facts of abuse from the marriage to be irrelevant to her ex-husband's right of joint custody and unsupervised visitation with their daughter. The conferee related problems with the mediation process. Ms Fiscus stated that the current court system allows the abuser to experience no consequences, and that the passage of **SB 347** would help address this issue. (Attachment 6)

Marilyn Ault, Battered Women Task Force, YWCA testified in support of **SB 347**. The conferee related that the YWCA's Battered Women Task Force has had an intervention program for over twelve years. The conferee related that it is her organization's observation over the twelve years of conducting domestic violence intervention programs, that physical violence is only one tactic used to dominate a partner. Ms Ault stated that battering is basically a learned behavior and that the YWCA's program uses an educational model based on a successful program in Duluth, Minnesota. Ms Ault stated that funding for batterers' intervention programs is difficult to obtain, therefore, it is likely that there will be very few such programs. The conferee stated that there are programs presented to the courts as "anger control" programs (which consist of two to four hour programs) to address domestic battering. The conferee stated that the process of changing behavior of batterers often can not be done in the six month program offered by the YWCA. The conferee concluded by stating that the YWCA's experience with providing services for victims and intervention programs for perpetrators would make that organization an appropriate choice for providing accreditation for agencies offering programs for domestic batterers. (Attachment 7)

Shelley Mann, SOS Emporia, testified in support of **SB 347**. The conferee related her experience in working with child victims of domestic violence, and stated that the children suffer psychological and many times physical injury as a result of domestic violence. The conferee stated that domestic violence/abuse is about control, domination, degradation, manipulation and fear. The conferee continued by stating that it makes no difference who the abuse is directed toward in the home, the children suffer. The conferee stated that the imbalance of power remains after a separation or divorce. Ms Mann stated that current custody and

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visitation laws are based on the assumptions that parents negotiate from relatively equal positions of power, however, that is not typical in an abusive situation. The conferee concluded by stating that children of divorce where domestic violence is a factor are at risk for destructive behaviors. The conferee urged the support of **SB 347** to protect the children in divorce situations where domestic violence is an issue. (Attachment 8)

Maggie Hardie, Development Director, Safe Home Johnson County spoke in support of **SB 347**. The conferee stressed that this bill only presumes that the guidelines set forth in this legislation are in the best interest of the child. The conferee stated that this bill makes no assumptions as to gender of the abusive parent. The conferee related an experience of a Johnson County family who, if this bill had been in effect, would have benefitted from this legislation. (Attachment 9)

Dana Edwards from Pittsburg testified as a victim of mental and physical abuse, and expressed support of **SB 347**. The conferee stated that mediation was one of the worst parts of the child custody/divorce ordeal. The conferee related that her ex-husband had used a gun to threaten suicide to manipulate her. Ms Edwards stated that threatening phone calls and notes caused her great emotional stress, while her ex-husband remained calm and cool throughout the divorce and post-divorce period. The conferee stated that she learned that her story was not unusual, and urged the passage of **SB 347**. (Attachment 10)

Debra Bates-Lamborn testified in support of **SB 347**. The conferee stated that she was a survivor of domestic violence. The conferee related that several occurrences of abuse occurred during that marriage. The conferee stated that despite the documented cases of physical abuse, domestic violence was never an issue in the original divorce. The conferee stated her ex-husband used child custody and visitation as a new forum for the continuation of the abuse. The conferee concluded by relating that because current child custody laws are based on an assumption that divorcing parents are in relatively equal position of power, and that such parents act in the children's best interest, these laws work against the protection of the children in families with a history of family violence. (Attachment 11)

Juliene A. Maska, Victims' Rights Coordinator, Office of the Attorney General spoke supporting **SB 347**. The conferee expressed support of this bill on behalf of the Attorney General. The conferee stated that the Attorney General believes that this bill is a step in the right direction to recognize the best interest of the child. The conferee stated that her office was in agreement with the amendments proposed by KCSDV. (Attachment 12)

Mr. Greg DeBacker, National Congress for Fathers and Children, testified in opposition to **SB 347**. The conferee stated that trying to interpret this bill as gender neutral is very difficult. The conferee stated that divorce can bring out the worst in both parties. The conferee stated that when custody of the children is involved, winning equals monetary rewards to the victor. The conferee stated that abuse of laws such as **SB 347** are guaranteed to occur. The conferee referred to written testimony identifying statements of concern contained in the bill. The conferee stated that there are ample laws available and if an legitimate abuser is not kept in check, the fault lies with the judicial system and not the lack of another vague law. The conferee stated that this law is opening up another way for fathers to be accused falsely and stripped of their rights. (Attachment 13)

Joseph Ledbetter testified in opposition to **SB 347**. The conferee strongly urged the Committee not to move the bill. The conferee stated that he represents millions of fathers who have been trampled on by the courts. The conferee acknowledge that there are abusive situations, but there are ample laws to handle such situations. The conferee stated that there are millions of kids cut off from their fathers, and referenced a book called, Fatherless America which talks about the statistics of divorce and its devastating effect on the children and youth in this country. The conferee urged the Committee to consider if this bill leaves parents with the rights to their children, and does it provide due process? The conferee stated that a large percentage of mothers in this state have residential custody. The conferee stated that he believes this law is not gender neutral. The conferee discussed frivolous charges made by women and the fact that there are male victims of abuse also. The conferee stated that taking kids from their fathers is the heart of a lot of problems. The conferee stated that there are already laws on the books, and this bill is opening up another way for fathers to be accused falsely and stripped of their rights.

The Chair announced that due to time limitation, another hearing will be held on **SB 347** on February 12, 1996. The Chair stated that the conferees, Mr. Johnson, Mr. Alquist, Mrs. Debacker and Mr. Neiswender, will be able to testify on **SB 347** on February 12, 1996. The Chair announced that the Committee will meet tomorrow, while the Subcommittee meets on another bill in room 522-S.

The Chair adjourned the meeting.

The next meeting is scheduled for February 1, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-31-96

NAME	REPRESENTING
Scott Ferris	KBI
Brian Tullis	KBI
Elwaine Hornsey	Kansas Credit Attorneys Ass'n
Jan Gussie	KSSDV
Margie Haroldie	Safehome, Johnson County
Paul Shelby	OTA
Julene Mascha	AG office
Pam Somerville	KS Auto Dealers Assn
Wm Mayo	KS Auto Dealers Assn.
Randy Evans	Kc Atty General's
Diane Meyers	northwest Kansas Family Shelter
Valeri Kimm	NWKFS
Monica Neff	KS N.O.W.
KATHY KIRK	OTA
Laura Emery	Safehouse Pittsburg Ks
Karen Brown	Safehome Inc. O.P., KS
Pamela Pochonec	Hays Ks
Shirley Carrall	NKFS Hays, Ks
Sharon Anderson	Fredonia Ks,

Quill Johnson
JUDY MAYO

Topeka, Ks
SELF

Kansas Automobile Dealers Association

800 Jackson, Suite 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • Fax (913) 233-1462

TO: The Honorable Tim Emert
Chairman, Senate Judiciary Committee
Members of the Committee

FROM: Pam Somerville, Director of Government Affairs

RE: Request for Bill Introduction
Amendments to K.S.A. 8-2414
Cancellation, Termination and Nonrenewal of Franchise

Date: January 31, 1996

Thank you for the opportunity to appear before you to request a bill introduction to amend K.S.A. 2414, the cancellation, termination, and nonrenewal section of the Dealer and Manufacturing Licensing Act.

The amendments requested would accomplish the following:

- 1) Change the burden of proof from the dealer to the manufacturer, and the notice by the manufacturer from 30 to 90 days.
- 2) Delete the term "reasonable cause" and replace with definitions of "good cause" and "for not good cause" for cancellation, termination and nonrenewal, including the fact that the dealer has established and holds a franchise of another make or line of motor vehicles in the same dealership facilities.
- 3) Expand existing language to outline specifically what a manufacturer must pay the dealer upon the termination, cancellation or nonrenewal of the franchise agreement.

Thank you again for the opportunity to appear before you. I would be happy to respond to any questions.

*Sen Jud Com
1-31-96
A-Hack P*

"Serving the franchised new car and truck dealers since 1932"

#3

KCSDV Proposed Amendments to SB 347

(Proposed Amendments in **Bold**)

Page 1

Move up the last sentence of New Section 1, subsection (c)(3) to New Section 1, subsection (a)(1).

Moving this sentence under the definition of Abused Parent clarifies the fact that when victims use self-defense to protect themselves or their children, they are not an abusive parent.

Line 42: Delete the word "therapist" from line 42.

KCSDV has no objection to the therapist of the abusive parent supervising visitation.

Line 43: Add the words "without the consent of the abused parent." after the word "violence," to line 43.

Adding these words provides for the possibility that the abusive parent has family or associates who are trusted by the abused parent to provide adequate supervision.

Page 2

Line 18: Replace the word "family" with "domestic" in line 18.

There is no change in content, just a change in language for consistency.

Line 20: After the word "violence," add the words, "or from a program approved by the Kansas coalition against sexual and domestic violence." in line 20.

This change allows for the possibility that providers of batterer's programs may have received their training or credentials from another state or from another reputable organization.

Line 26: Delete the words, "pursuant to a protection from abuse act." in line 26.

This deletion makes the section consistent with Kansas law which provides for a restraining order in divorce actions.

Sen. Luel Gow
1-31-96
Attach 2

Page 3

Line 1: Add the words, “not otherwise reimbursed or covered by insurance,” after the word, “care,” in line 1.

This language allows that, where insurance is available to cover costs of medical and psychological care for the abused spouse, the abuser will not be liable under this section.

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Line 31: Delete the words “or when either party asserts,” and add, “a history of” after the word “mediator” in line 31. Also add the words, “impaired the parties’ ability to mediate” after the word, “has,” and delete “has occurred” from line 31.

This change to subsection (e) will result in the following reading: A mediator shall not engage in mediation when it appears to the mediator that a history of domestic violence has impaired the parties’ ability to mediate unless:

This change recognizes that a mere assertion by either party should not be enough to prohibit the mediator from mediating. The mediator must be satisfied that violence has impaired the parties’ ability to mediate.

Line 36: Delete the words, “certified counselor,” and replace them with the word “mediator” in line 36.

Line 40: Delete the “n” from the word “an” and word “attorney” which follows and replace them with the words “support person”, in lines 39 and 40.

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Lines 26 - 30: Delete the words “but is in the best interests of the child to reside with and be in the sole custody of the parent who is not a perpetrator of domestic violence in the location of that parent’s choice, in or outside the state. The presumption shall be overcome only by a preponderance of the evidence that:” in lines 26 - 30, and replace those words with a period after “violence” in line 26 and the following sentence: “In determining whether a perpetrator of domestic violence has presented sufficient evidence to overcome

the presumption, the court shall consider all relevant factors including but not limited to:"

The change reflects an acknowledgement of the possibility that just because it is not in the best interest of the child to be placed with a perpetrator of domestic violence, it is not necessarily so that it is in the best interest of the child to be placed with the victim parent. Some victim parents, for reasons other than their victimization, are not suitable parents. This change provides for the court to find that it is in the best interest of the child to not be placed with either parent in some circumstances.

The deletion of the sentence beginning in line 29 acknowledges that there are not accessible batterer's programs in every county in the state of Kansas. It makes completion of a batterer's program only one of all relevant factors to consider when deciding whether the presumption against awarding custody has been overcome by the perpetrator.

Lines 31-32: Delete the word "successfully" from line 31 and add the words, "where such a program is accessible;" after the word "perpetrators" in line 32.

There is no way to evaluate "successful" completion of a batterer's program other than attendance. To use the word "successfully" when describing completion implies an assurance that the batterer will not re-offend.

The words added about accessibility of batterer's programs acknowledges that there are not currently batterer's programs accessible in all counties in Kansas.

Line 34: Delete the words "that the best interests of the child requires" and add the words, "is required" after the word "parent" in line 34 and delete the entire (dd) subsection.

Because the list of factors for the judge to consider when evaluating whether the perpetrator has overcome the presumption is an incomplete list, it is not necessary to reiterate the best interest of the child standard.
Is this right, Dorthy?

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Lines 11 and 13: Add the words "where such a program is accessible" after the word "perpetrator" in lines 11 and 13.

Again, the change acknowledges the fact that batterers' programs are not readily accessible across the state.

Lines 29 - 30: Delete the word "contradictory" in line 29 and the word "successfully" in lines 29-30.

Page 12

Line 33: Delete the words "When either party asserts" and replace them with the words, "the counselor" in line 32 . Add the words "a history of" after the word "that" in line 32. Add the words, "impaired the parties' ability to participate in counseling" after the word "violence" in line 32, and delete the word "occurred" in line 33.

The subsection will read "A professional shall not engage in counseling when it appears to the professional or the counselor that a history of domestic violence has impaired the parties' ability to participate in counseling unless:"

This revision comports with the subsection on mediation, above.

Line 37: Delete the word "certified" after the words "of the victim by a" in line 37 and delete the "n" in the word "an" and the word "attorney" following "a" in line 41. Add the word "support person" in place of the word "attorney."

This revision comports with the subsection on mediation, above. The subsection will then read "the victim is permitted to have in attendance at counseling a supporting person of such victim's choice, including but not limited to a support person or advocate.

Jan Guthrie conferee 3

KCSDV Proposed Amendments to SB 347

(Proposed Amendments in **Bold**)

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14. New Section 1. As used in this act:
15. (a) "Abused parent" means that parent in an abusive relationship who
16. has not committed domestic violence.
(1) **Domestic violence does not include reasonable acts of self-defense utilized by one parent to protect such parent's self or a child in the family from the domestic violence of the other parent.**
17. (b) "Court" means any district court having jurisdiction over the parents
18. or child, or both, at issue.
19. (c) "Domestic violence" means the occurrence of one or more of the
20. following acts between persons who reside together, or who formerly
21. resided together:
(1) Wilfully attempting to cause bodily injury or wilfully or wantonly
22. causing bodily injury;
23. (2) wilfully placing, by physical threat, another in fear of imminent
24. bodily injury;
25. (3) rape, as defined in K.S.A. 21-3502, and amendments thereto.
26. Domestic violence shall also include sexual abuse as defined herein. ~~Do-~~
27. ~~mestic violence does not include reasonable acts of self-defense utilized~~
28. ~~by one parent to protect such parent's self or a child in~~
29. ~~the family from the domestic violence of the other parent.~~
30. (d) "Sexual abuse" means an act of sexual contact or sexual penetra-
31. tion between a child under the age of 18 years and an adult who has
32. custody or control over the child or is in a position of parental authority.
33. A person in position of parental authority who knowingly permits or
34. acquiesces in sexual abuse by the other parent or by any other person
35. also commits sexual abuse.
36. (e) "Supervised visitation" means face-to-face contact between an
37. abusive parent and a child which occurs in the immediate presence of a
38. supervising person approved by the court under conditions which prevent
39. any physical abuse, threats, intimidation, abduction or humiliation of ei-
40. ther the abused parent or the child. The supervising person shall not be
41. any relative friend, ~~therapist~~ or associate of the parent perpetrating do-
- 42.

1. person may be a family member or friend of the abused parent. At the
2. request of the abused parent, a court may order that the supervising
3. person shall be a law enforcement officer or other competent profes-
4. sional. The person who perpetrated domestic violence shall pay any and
5. all cost incurred in the supervision of visitation. In no case shall supervised
6. visitation be overnight or in the home of the violent parent.
7. (f) "Program of intervention for perpetrators" means:
8. (1) A specialized program that:
9. (A) Accepts perpetrators of domestic violence into treatment or ed-
10. ucational classes to satisfy court orders;
11. (B) offers treatment to perpetrators of domestic violence; or
12. (C) offers classes or instruction to perpetrators of violence; and
13. (2) is a program accredited through the Kansas coalition against sex-
14. ual and domestic violence. To ensure that the program for intervention
15. of perpetrators is governed by a philosophy consistent with giving highest
16. priority to the safety of the victim and full accountability of the perpetra-
17. tor, accreditation requirements shall include, but not be limited to:
18. (A) Previous work with victims of **family domestic** violence; and
19. (B) a minimum of 16 hours training by the Kansas coalition against
20. sexual and domestic violence **or from a program approved by the Kansas coalition**
21. **against sexual and domestic violence.**
22. New Sec. 2. Whenever a parent, who is a party to a proceeding pur-
23. suant to article 16 of chapter 60 of the Kansas Statutes Annotated, and
24. amendments thereto, is arrested or indicted for a criminal offense in
25. which the victim is such parent's child or such child's other parent, the
26. court, upon a motion of the prosecuting attorney or other parent, shall
27. issue a restraining order. ~~pursuant to the protection from abuse act.~~ Such
28. restraining order shall prohibit all contact between the arrested or in-
29. dicted parent and the other spouse and all children of the family, except
30. for specific purposes set forth in the order, which shall be limited to
31. communications expressly dealing with the education, health and welfare
32. of the children. Further, all such orders shall prohibit the arrested or
33. indicted parent from intentionally going within 50 yards of the home,
34. school, place of employment or person of the other parent and the chil-
35. dren or within 50 feet of any such parent or children's automobiles
36. except as may otherwise be necessary for supervised visitation, as further
37. ordered, or except as otherwise necessitated by circumstances considering
38. the proximity of the parties' residences or places of employment. Super-
39. vised visitation may be reinstated, upon a motion for a hearing by the
40. arrested or indicated parent, if the court finds such supervised visitation
41. to be in the best interests of the child.
42. New Sec. 3. In any domestic violence case, all court costs, attorney
43. fees, evaluation fees and expert witness fees incurred in furtherance of
44. this act, shall be paid by the perpetrator of the domestic violence, in-

1. cluding all costs of medical and psychological care, **not otherwise reimbursed or covered by insurance**, for the abused spouse,
2. or for any of the children, necessitated by the domestic violence.
3. Sec. 4. K.S.A. 23-602 is hereby amended to read as follows: 23-602.
4. (a) *Except as provided in subsection (c)*, the court may order mediation
5. of any contested issue of child custody or visitation at any time, upon the
6. motion of a party or on the court's own motion. A hearing officer in a
7. proceeding pursuant to K.S.A. ~~1986 Supp.~~ 23-701 may order mediation
8. of a contested issue of child visitation in such a proceeding.
9. (b) If the court or hearing officer orders mediation under subsection
10. (a), the court or hearing officer shall appoint a mediator, taking into con-
11. sideration the following:
12. (1) An agreement by the parties to have a specific mediator appointed
13. by the court or hearing officer;
14. (2) the nature and extent of any relationships the mediator may have
15. with the parties and any personal, financial, or other interests the mediator
16. may have which could result in bias or a conflict of interest;
17. (3) the mediator's knowledge of (A) the Kansas judicial system and
18. the procedure used in domestic relations cases, (B) other resources in the
19. community to which parties can be referred for assistance, (C) child de-
20. velopment, (D) clinical issues relating to children, (E) the effects of di-
21. vorce on children and (F) the psychology of families; and
22. (4) the mediator's training and experience in the process and tech-
23. niques of mediation.
24. (c) *In any proceeding brought pursuant to article 16 chapter 60 of the*
25. *Kansas Statutes Annotated, and amendments thereto, no spouse or*
26. *parent who satisfies the court that such spouse or parent or any of the*
27. *children has been the victim of domestic violence, as defined in section 1,*
28. *and amendments thereto, perpetrated by the other spouse or parent shall*
29. *be ordered to participate in mediation by the court.*
30. Sec. 5. K.S.A. 23-603 is hereby amended to read as follows: 23-603.
31. (a) A mediator appointed under K.S.A. ~~1985 Supp.~~ 23-602 and amend-
32. ments thereto shall:
33. (1) Inform the parties of the costs of mediation;
34. (2) advise the parties that the mediator does not represent either or
35. both of the parties;
36. (3) define and describe the process of mediation to the parties;
37. (4) disclose the nature and extent of any relationships with the parties
38. and any personal, financial or other interests which could result in bias
39. or a conflict of interest;
40. (5) advise each of the parties to obtain independent legal advice;
41. (6) *except as provided in subsection (e)*, allow only the parties to at-
42. tend the mediation sessions;
43. (7) disclose to the parties' attorneys any factual documentation re-

1. vealed during the mediation if at the end of the mediation process the
2. disclosure is agreed to by the parties;
3. (8) ensure that the parties consider fully the best interests of the
4. children and that the parties understand the consequences of any decision
5. they reach concerning the children; ~~and~~
6. (9) inform the parties of the extent to which information obtained
7. from and about the participants through the mediation process is not
8. privileged and may be subject to disclosure; *and*
9. (10) *screen for the occurrence of domestic violence between the par-*
10. *ies.*
11. (b) The mediator may meet with the children of any party and, with
12. the consent of the parties, may meet with other persons.
13. (c) The mediator shall make a written summary of any understanding
14. reached by the parties. A copy of the summary shall be provided to the
15. parties and their attorneys, if any. The mediator shall advise each party
16. in writing to obtain legal assistance in drafting any agreement or for re-
17. viewing any agreement drafted by the other party. Any understanding
18. reached by the parties as a result of mediation shall not be binding upon
19. the parties nor admissible in court until it is reduced to writing, signed
20. by the parties and their attorneys, if any, and approved by the court. If
21. the parties are not represented by attorneys, the mediator shall provide to
22. the court or hearing officer the written summary of any understanding
23. signed by the parties, which, if approved by the court or hearing officer,
24. shall be incorporated in the order of the court or hearing officer.
25. (d) The mediator may act as a mediator in subsequent disputes be-
26. tween the parties. However, the mediator shall decline to act as attorney,
27. counselor or psychotherapist for either party during or after the mediation
28. or divorce proceedings unless the subsequent representation, counseling
29. or treatment is clearly distinct from the mediation issues.
30. (e) *A mediator shall not engage in mediation when it appears to the*
31. *mediator ~~or when either party asserts~~ that a history of domestic violence has impaired the*
32. *parties' ability to mediate ~~has occurred~~*
33. *unless:*
34. (1) *Mediation is requested by the victim of the alleged domestic vio-*
35. *lence;*
36. (2) *mediation is provided in a specialized manner that protects the*
37. *safety of the victim by a ~~certified counselor mediator~~ who is trained in domestic*
38. *violence; and*
39. (3) *the victim is permitted to have in attendance at the mediation a*
40. *supporting person of such victim's choice, including but not limited to a ~~an~~*
41. *~~attorney support person~~ or advocate.*
42. Sec. 6. K.S.A. 23-607 is hereby amended to read as follows: 23-607.
43. *Except as provided in section 3, and amendments hereto, the costs of any*
44. *mediation ordered under K.S.A. ~~1985 Supp.~~ 23-602 shall be taxed to*

2-8

1. either or both parties as equity and justice require, unless the parties have
2. reached a reasonable agreement as to payment of the costs.
3. Sec. 7. K.S.A. 60-1610 is hereby amended to read as follows: 60-
4. 1610. A decree in an action under this article may include orders on the
5. following matters:
6. (a) *Minor children.* (1) *Child support and education.* The court shall
7. make provisions for the support and education of the minor children. The
8. court may modify or change any prior order when a material change in
9. circumstances is shown, irrespective of the present domicile of the child
10. or the parents. The court may make a modification of child support ret
11. roactive to a date at least one month after the date that the motion to
12. modify was filed with the court. Any increase in support ordered effective
13. prior to the date the court's judgment is filed shall not become a lien on
14. real property pursuant to K.S.A. 60-2202, and amendments thereto. Re-
15. gardless of the type of custodial arrangement ordered by the court, the
16. court may order the child support and education expenses to be paid by
17. either or both parents for any child less than 18 years of age, at which
18. age the support shall terminate unless: (A) The parent or parents agree,
19. by written agreement approved by the court, to pay support beyond the
20. time the child reaches 18 years of age; (B) the child reaches 18 years of
21. age before completing the child's high school education in which case the
22. support shall not terminate automatically, unless otherwise ordered by the
23. court, until June 30 of the school year during which the child became
24. 18 years of age if the child is still attending high school; or (C) the child
25. is still a bona fide high school student after June 30 of the school year
26. during which the child became 18 years of age, in which case the court,
27. on motion, may order support to continue through the school year during
28. which the child becomes 19 years of age so long as the child is a bona
29. fide high school student and the parents jointly participated or knowingly
30. acquiesced in the decision which delayed the child's completion of high
31. school. The court, in extending support pursuant to subsection (a)(1)(C),
32. may impose such conditions as are appropriate and shall set the child
33. support utilizing the guideline table category for 16-year through 18-year
34. old children. Provision for payment of support and educational expenses
35. of a child after reaching 18 years of age if still attending high school shall
36. apply to any child subject to the jurisdiction of the court, including those
37. whose support was ordered prior to July 1, 1992. If an agreement ap-
38. proved by the court prior to July 1, 1988, provides for termination of
39. support before the date provided by subsection (a)(1)(B), the court may
40. review and modify such agreement, and any order based on such agree-
41. ment, to extend the date for termination of support to the date provided
42. by subsection (a)(1)(B). If an agreement approved by the court prior to
43. July 1, 1992, provides for termination of support before the date provided

1. by subsection (a) (1) (C), the court may review and modify such agreement,
2. and any order based on such agreement, to extend the date for termi-
3. nation of support to the date provided by subsection (a) (1) (C). For pur-
4. poses of this section, “bona fide high school student” means a student
5. who is enrolled in full accordance with the policy of the accredited high
6. school in which the student is pursuing a high school diploma or a grad-
7. uate equivalency diploma (GED). In determining the amount to be paid
8. for child support, the court shall consider all relevant factors, without
9. regard to marital misconduct, including the financial resources and needs
10. of both parents, the financial resources and needs of the child and the
11. physical and emotional condition of the child. Until a child reaches 18
12. years of age, the court may set apart any portion of property of either the
13. husband or wife, or both, that seems necessary and proper for the support
14. of the child. Every order requiring payment of child support under this
15. section shall require that the support be paid through the clerk of the
16. district court or the court trustee except for good cause shown.
17. (2) *Child custody and residence.* (A) *Changes in custody.* Subject to
18. the provisions of the uniform child custody jurisdiction act (K.S.A. 38-
19. 1301 *et seq.*, and amendments thereto), the court may change or modify
20. any prior order of custody when a material change of circumstances is
21. shown.
22. (B) *Examination of parties.* The court may order physical or mental
23. examinations of the parties if requested pursuant to K.S.A. 60-235, and
24. amendments thereto.
25. (3) *Child custody of residency criteria.* The court shall determine
26. custody or residency of a child in accordance with the best interests of
27. the child.
28. (A) If the parties have a written agreement concerning the custody
29. or residency of their minor child, it is presumed that the agreement is in
30. the best interests of the child. This presumption may be overcome and
31. the court may make a different order if the court makes specific findings
32. of fact stating why the agreement is not in the best interests of the child.
33. (B) In determining the issue of custody of residency of a child, the
34. court shall consider all relevant factors, including but not limited to:
35. (i) The length of time that the child has been under the actual care
36. and control of any person other than a parent and the circumstances
37. relating thereto;
38. (ii) the desires of the child’s parents as to custody or residency;
39. (iii) the desires of the child as to the child’s custody or residency;
40. (iv) the interaction and interrelationship of the child with parents,
41. siblings and any other person who may significantly affect the child’s best
42. interests;
43. (v) the child’s adjustment to the child’s home, school and community;

1. (vi) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent; and
2. (vii) ~~evidence of spousal abuse~~ domestic violence. If the court finds evidence of domestic violence, the court shall consider:
 3. (aa) Primarily the safety and well-being of the child and parent who are the victims of domestic violence; and
 4. (bb) the perpetrator's history of causing physical harm, bodily injury or assault, or causing reasonable fear of physical harm, bodily injury or assault, to another person. If a parent is absent or relocates because of an act of domestic violence by another parent, the absence or relocation shall not be a factor that weighs against such parent in determining custody or residency.

Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(4) *Types of custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child.

(A) (i) *In determining the issue of custody or residency of a child, a determination by the court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interests of the child to be placed in sole custody or joint custody with the perpetrator of domestic violence. ~~but is in the best interests of the child to reside with and be in the sole custody of the parent who is not a perpetrator of domestic violence in the location of that parent's choice, in or outside the state. The presumption shall be overcome only by a preponderance of the evidence that:~~ In determining whether a perpetrator of domestic violence has presented sufficient evidence to overcome the presumption, the court shall consider all relevant factors including but not limited to:*

1. (aa) The perpetrating parent has ~~successfully~~ completed a program of intervention for perpetrators where such a program is accessible;
2. (bb) the perpetrating parent is not abusing alcohol or drugs;
3. (cc) ~~that the best interests of the child requires~~ the perpetrator's participation as custodial parent is required because of the other parent's absence, mental illness or substance abuse;
4. (dd) ~~there are other circumstances which affect the best interests of the child.~~

The fact that the abused parent suffers from the effects of the abuse shall not be grounds for denying that parent custody.

(ii) If the court finds that both parents have a history of perpetrating domestic violence, custody shall be awarded solely to the parent who is less likely to continue to perpetrate domestic violence. In such a case, the

1. court shall mandate completion of a program of intervention for perpe-
2. trators by the custodial parent **where such a program is accessible**. If necessary to protect
3. the welfare of the
4. child, custody may be awarded to a nonparent, as provided in subpara-
5. graph (a)(4)(B)(iv).
6. (B) Subject to the provisions of subparagraph (A) the order shall
7. include, but not be limited to, one of the following, in the order of pref-
8. erence:
9. ~~(A)~~ (i) *Joint custody*. The court may place the custody of a child with
10. both parties on a shared or joint-custody basis. In that event, the parties
11. shall have equal rights to make decisions in the best interests of the child
12. under their custody. When a child is placed in the joint custody of the
13. child's parents, the court may further determine that the residency of the
14. child shall be divided either in an equal manner with regard to time of
15. residency or on the basis of a primary residency arrangement for the child.
16. The court, in its discretion, may require the parents to submit a plan for
17. implementation of a joint custody order upon finding that both parents
18. are suitable parents or the parents, acting individually or in concert, may
19. submit a custody implementation plan to the court prior to issuance of a
20. custody decree. If the court does not order joint custody, it shall include
21. in the record the specific findings of fact upon which the order for custody
22. other than joint custody is based.
23. ~~(B)~~ (ii) *Sole custody*. The court may place the custody of a child with
24. one parent, and the other parent shall be the noncustodial parent. The
25. custodial parent shall have the right to make decisions in the best interests
26. of the child, subject to the visitation rights of the noncustodial parent.
27. ~~(C)~~ (iii) *Divided custody*. In an exceptional case, the court may divide
28. the custody of two or more children between the parties.
29. ~~(D)~~ (iv) *Nonparental custody*. If during the proceedings the court
30. determines that there is probable cause to believe that the child is a child
31. in need of care as defined by subsections (a) (1), (2) or (3) of K.S.A. 38-
32. 1502, and amendments thereto, or that neither parent is fit to have cus-
33. tody, the court may award temporary custody of the child to another
34. person or agency if the court finds the award of custody to the other
35. person or agency is in the best interests of the child. In making such a
36. custody order, the court shall give preference, to the extent that the court
37. finds it is in the best interests of the child, first to awarding such custody
38. to a relative of the child by blood, marriage or adoption and second to
39. awarding such custody to another person with whom the child has close
40. emotional ties. The court may make temporary orders for care, support,
41. education, and visitation that it considers appropriate. Temporary custody
42. orders are to be entered in lieu of temporary orders provided for in K.S.A.
43. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect

1. children. An award of temporary custody under this paragraph shall not
2. terminate parental rights nor give the court the authority to consent to
3. the adoption of the child. When the court enters orders awarding tem-
4. porary custody of the child to an agency or a person other than the parent,
5. the court shall refer a transcript of the proceedings to the county or
6. district attorney. The county or district attorney shall file a petition as
7. provided in K.S.A. 38-1531, and amendments thereto, and may request
8. termination of parental rights pursuant to K.S.A. 38-1581, and amend-
9. ments thereto. The cost of the proceedings shall be paid from general
10. fund of the county. When a final determination is made that the child is
11. not a child in need of care, the county or district attorney shall notify the
12. court in writing and the court, after a hearing, shall enter appropriate
13. custody orders pursuant to this section. If the same judge presides over
14. both proceedings, the notice is not required. Any disposition pursuant to
15. the Kansas code for care of children shall be binding and shall supersede
16. any order under this section.

17. (b) *Financial matters.* (1) *Division of property.* The decree shall di-
18. vide the real and personal property of the parties whether owned by
19. either spouse prior to marriage, acquired by either spouse in the spouse's
20. own right after marriage or acquired by the spouses' joint efforts, by: (A)
21. a division of the property in kind; (B) awarding the property or part of
22. the property to one of the spouses and requiring the other to pay a just
23. and proper sum; or (C) ordering a sale of the property, under conditions
24. prescribed by the court, and dividing the proceeds of the sale. In making
25. the division of property the court shall consider the age of the parties;
26. the duration of the marriage; the property owned by the parties; their
27. present and future earning capacities; the time, source and manner of
28. acquisition of property; family ties and obligations; the allowance of main-
29. tenance or lack thereof; dissipation of assets; and such other factors as
30. the court considers necessary to make a just and reasonable division of
31. property.

32. (2) *Maintenance.* The decree may award to either party an allowance
33. for future support denominated as maintenance, in an amount the court
34. finds to be fair, just and equitable under all of the circumstances. The
35. decree may make the future payments modifiable or terminable under
36. circumstances prescribed in the decree. The court may make a modif-
37. ication of maintenance retroactive to a date at least one month after the
38. date that the motion to modify was filed with the court. In any event, the
39. court may not award maintenance for a period of time in excess of 121
40. months. If the original court decree reserves the power of the court to
41. hear subsequent motions for reinstatement of maintenance and such a
42. motion is filed prior to the expiration of the stated period of time for
43. maintenance payments, the court shall have jurisdiction to hear a motion

1. by the recipient of the maintenance to reinstate the maintenance pay-
2. ments. Upon motion and hearing, the court may reinstate the payments
3. in whole or in part of a period of time, conditional upon any modifying
4. or terminating circumstances prescribed by the court, but the reinstate-
5. ment shall be limited to a period of time not exceeding 121 months. The
6. recipient may file subsequent motions for reinstatement of maintenance
7. prior to the expiration of subsequent periods of time for maintenance
8. payments to be made, but no single period of reinstatement ordered by
9. the court may exceed 121 months. Maintenance may be in a lump sum,
10. in periodic payments, on a percentage of earnings or on any other basis.
11. At any time, on a hearing with reasonable notice to the party affected,
12. the court may modify the amounts or order conditions for the payment
13. of any portion of the maintenance originally awarded that has not already
14. become due, but no modification shall be made without the consent of
15. the party liable for the maintenance, if it has the effect of increasing or
16. accelerating the liability for the unpaid maintenance beyond what was
17. prescribed in the original decree. Every order requiring payment of main-
18. tenance under this section shall require that the maintenance be paid
19. through the clerk of the district court or the court trustee except for good
20. cause shown.

21. (3) *Separation agreement.* If the parties have entered into a separa-
22. tion agreement which the court finds to be valid, just and equitable, the
23. agreement shall be incorporated in the decree. The provisions of the
24. agreement on all matters settled by it shall be confirmed in the decree
25. except that any provisions for the custody, support or education of the
26. minor children shall be subject to the control of the court in accordance
27. with all other provisions of this article. Matters settled by an agreement
28. incorporated in the decree, other than matters pertaining to the custody,
29. support or education of the minor children, shall not be subject to sub-
30. sequent modification by the court except: (A) As prescribed by the agree-
31. ment or (B) as subsequently consented to by the parties.

32. (4) *Costs and fees.* Costs and attorney fees may be awarded to either
33. party as justice and equity require. The court may order that the amount
34. be paid directly to the attorney, who may enforce the order in the attor-
35. ney's name in the same case.

36. (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
37. of a spouse, the court shall order the restoration of that spouse's maiden
38. or former name.

39. (2) *Effective date as to remarriage.* Any marriage contracted by a
40. party, within or outside this state, with any other person before a judg-
41. ment of divorce becomes final shall be voidable until the decree of divorce
42. becomes final. An agreement which waives the right of appeal from the
43. granting of the divorce and which is incorporated into the decree or

1. signed by the parties and filed in the case shall be effective to shorten
2. the period of time during which the remarriage is voidable.
3. Sec. 8 K.S.A. 60-1616 is hereby amended to read as follows: 60-
4. 1616. (a) *Parents* (1) *Except as provided further*, a parent not granted
5. custody or residency of the child is entitled to reasonable visitation rights
6. unless the court finds, after a hearing, that visitation would endanger
7. seriously the child's physical, mental, moral, or emotional health.
8. (2) *If the court finds that a parent has a history of domestic violence,*
9. *the court shall only allow supervised child visitation with that parent,*
10. *conditioned upon that parent's participation in a program of intervention*
11. *for perpetrators, where such a program is accessible. Unsupervised visitation shall only be*
12. *allowed if it is*
13. *shown by a preponderance of the evidence that the violent parent has*
14. ~~*successfully*~~ *completed a program of intervention for perpetrators, where such a program is*
15. *accessible, is not*
16. *abusing alcohol or controlled substance, poses no danger to the child,*
17. *and that such visitation is in the child's best interests.*
18. *In a visitation order, a court may:*
19. (A) *Order an exchange of a child to occur in a protected setting;*
20. (B) *order the perpetrator of domestic violence to abstain from pos-*
21. *session or consumption of alcohol or controlled substance during the*
22. *visitation and for 24 hours preceding the visitation ; and*
23. (C) *impose any other condition deemed necessary to provide for the*
24. *safety of the child, the victim of domestic violence or other family or*
25. *household member; and*
26. (D) *whether or not a visitation is allowed, the court may order the*
27. *address of the child and victim to be kept confidential.*
28. (3) *If any court finds that a parent has sexually abused such parent's*
29. *child or children, the court shall prohibit all visitation and contact be-*
30. *tween the abusive parent and the children until such time, following a*
31. ~~*contradictory*~~ *hearing, the court finds that the abusive parent has suc-*
32. ~~*cessfully*~~ *completed counseling designed*
33. *for such sexual abusers, and that supervised visitation is in the child's best*
34. *interests.*
35. (b) *Grandparents and stepparents.* Grandparents and stepparents
36. may be granted visitation rights.
37. (c) *Modification.* The court may modify an order granting or denying
38. visitation rights whenever modification would serve the best interests of
39. the child.
40. (d) *Enforcement of rights.* An order granting visitation rights to a
41. parent pursuant to this section may be enforced in accordance with K.S.A.
42. 23-701, and amendments thereto.
43. (e) *Repeated denial of rights, effect.* Repeated unreasonable denial of
- or interference with visitation rights granted to a parent pursuant to this
- section may be considered a material change of circumstances which jus-

1. tifies modification of a prior order of child custody.
2. (f) *Repeated child support misuse, effect.* Repeated child support mis-
3. use may be considered a material change of circumstances which justifies
4. modification of a prior order of child custody.
5. Sec. 9 K.S.A. 60-1617 is hereby amended to read as follows: 60-
6. 1617. (a) *Family counseling.* (1) *Except as provided is subparagraph, (2),*
7. upon motion by any party or on the court's own motion, the court may
8. order at any time prior to or subsequent to the alteration of the parties'
9. marital status that the parties and any of their children be interviewed by
10. a psychiatrist, licensed psychologist or other trained professional in family
11. counseling, approved by the court, for the purpose of determining
12. whether it is in the best interests of any of the parties' children that the
13. parties and any of their children have counseling with regard to matters
14. of custody and visitation. The court shall receive the written opinion of
15. the professional, and the court shall make the opinion available to counsel
16. upon request. Counsel may examine as a witness any professional con-
17. sulted by the court under this section. If the opinion of the professional
18. is that counseling is in the best interests of any of the children, the court
19. may order the parties and any of the children to obtain counseling. Nei-
20. ther party shall be required to obtain counseling pursuant to this section
21. if the party objects thereto because the counseling conflicts with sincerely
22. held religious tenets and practices to which any party is an adherent.
23. (2) *In any proceeding brought pursuant to article 16., chapter 60, of the*
24. *Kansas Statutes Annotated, and amendments thereto, no spouse or*
25. *parent who satisfies the court that such spouse or parent or any of the*
26. *children, has been the victim of domestic violence perpetrated by the other*
27. *spouse or parent shall be ordered to participate in counseling by the court.*
28. (3) *A professional who receives a referral or order from a court to*
29. *conduct counseling shall screen for the occurrence of domestic violence*
30. *between the parties.*
31. (4) *A professional shall not engage in counseling when it appears to*
32. *the professional or ~~when either party asserts~~ the counselor that a history of domestic*
33. *violence has **impaired the parties' ability to participate in counseling***
34. *~~occurred~~ unless:*
35. (A) *Counseling is requested by the victim of the alleged domestic vi-*
36. *olence;*
37. (B) *counseling is provided in a specialized manner that protects the*
38. *safety of the victim by a ~~certified~~ counselor who is trained in domestic*
39. *violence; and*
40. (C) *the victim is permitted to have in attendance at counseling a sup-*
41. *porting person of such victim's choice, including but not limited to an*
42. *~~attorney~~ support person or advocate.*
43. (b) *Costs.* *Except as provided is Section 3, and amendments thereto,*
44. the costs of the counseling shall be taxed to either party as equity and

1. justice require.
2. Sec. 10. K.S.A. 23-602, 23-603, 23-607, 60-1610, 60-1616 and 60-
3. 1617 are hereby repealed.
4. Sec. 11. This act shall take effect and be in force from and after its
5. publication in the statute book.

#1

Pam Rechanee

Senate Judiciary Committee

January 31, 1996

Re: SB347

Chairman Emert and other Committee Members:

I want to thank you for this opportunity to speak in favor of Senate Bill 347. It is my belief that this legislation is desperately needed for the protection of children in Kansas. It has certainly been my experience that judges can be biased against giving the mother custody--even when this is the desire of the children, and necessary for their safety.

I guess I need to find a starting point. I would start at the end of a 16 year marriage, February 4, 1993. The divorce occurred after years of emotional and physical abuse and infidelity. The harassment intensified after the divorce which occurred in Colorado. I was living in Hays, Kansas and he was in Cleveland, Ohio but still coming to Hays using the children as an excuse to make me go back to him. He said the divorce was just a piece of paper. This continued for 1 year after the divorce--he made attempts to buy me gifts--he tried to buy me a \$150,000 house here just to have him live with me here--while he commuted as a pilot all over the country. I repeatedly refused to cooperate in anyway--wanting to change my life for the better with the children.

In December 1993 he came for the last visit. On January 1, 1994 he called me trying to persuade me to take him back. I refused. He says it was then he met Kathy--he married her 3 months later. From May 1994 on he threatened me continually to take the children. He made calls all over town--to the schools, etc.--slandering me and trying to make himself look like the "together" parent. I tried to obtain legal counsel but did not have the money for the retainers required. He continued to lie and try to build himself a case. He even threatened to kidnap the children from their schools. I tried to get a restraining order from the phone harassment my son was getting but was denied any help. When I finally could obtain legal help with the money from my parents--they soon requested money for a trust--money they could just draw from as needed--I could not afford this and

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Attach 3

was dropped by my lawyer. I then had no help at all. Next I found a new attorney to take the case. I paid a \$500 retainer. He told me my case was difficult because my ex-husband had also sued me for marital torte. My ex-husband requested that custody evaluations be done. He had his scheduled first. Mine was done 2 weeks after his. When I arrived I was greeted by two biased people who had already made a choice and would not believe or even act like they were listening to me. I was considered to be lying. I then took an MMPI test with the idea that I was not being believed and that they felt my story was not worth listening to.

On June 30, 1995 I was to attend a 2 hour "counseling session" on how to talk to my ex-spouse in the future and to get my daughter back from visitation that had occurred for 1 month-- it was supposed to be 2 weeks. I had called my lawyer every day with no help given.

The afternoon of June 30, 1995 the Sheriff showed up at my door. I did not know why but invited him in. He came in and said, "Pam, did you know this was happening?" I had not received even a phone call to tell me there was a hearing. They had a hearing at 3 P.M. without my lawyer or myself present. I lived 1/2 block from the courthouse. The hearing went on without me-- while my lawyer enjoyed a weekend in Denver.

They took my son to talk to the judge who then told him he had to go with his father. He refused to go and they had him thrown in detention. He was there for two days before we even knew he was there. He was told to either go with his Dad or he would be taken to a foster home. His lawyer advised him to go with his Dad. He then tried to run away in North Carolina 2 times. His Dad, knowing that there was a full hearing scheduled on August 11, then had him committed to a mental hospital so he could not come home to testify at the hearing.

I have to date been refused telephone contact and visitation with my children. I have no contact with them--and did not until the Children's Protective Services in N.C. stepped in on a complaint from me of emotional abuse and allowed me to speak to my children. I spoke to Jeremy one evening. He called collect

and we were listened in to for the whole conversation. I have not spoken to my daughter now for 3 weeks. It is court ordered that I speak to them daily--15 minutes. This has not happened at all. My son's phone was taken away because he didn't get along and he is only allowed to call because the social worker stepped in.

To date, the first judge was disqualified after my complaint to Topeka. Next, hearings occurred November 8,9, and 10. My exhusband was given custody even though my 15 year old told the court he wanted to live with me. They said he should try to live with his dad. Since that time, he has been physically abused by his stepmother, she had him taken to jail and then committed to Charter Hospital. He has been there the last four weeks without any homework or visitation by his father. Even though my son had been attending Thomas Moore Prep School under my care, and doing fine, his father made him repeat the freshman year in a public school system; and now he's missing more school, which could cause him to repeat it again.

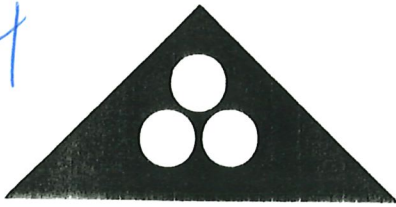
I have had phone calls from my son since he went to Charter. He asked me for help, but my efforts have been thwarted in every way. I have been told there was a hearing, and my 15 year old son has told the court that he refuses to return to his father's home. My five year old is still in that home! I received notice on January 29, 1996 that there would be court on January 30th to determine custody of my son in North Carolina.

The trauma that my children and I continue to endure is unbelievable to many who don't know how unfair and unjust these court decisions can be. I would have never believed it; had it not happened to us. I urge you to approve Senate Bill 347!

Pamela Pechanec

Hays, Kansas

(913) 625-6047



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BROOKE SAATHOFF

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Senate Judiciary Committee

January 31, 1996

Testimony of Dorthy Stucky Halley, KCSDV Legislative Committee Chair

Re: SB 347

Good morning, senators. Thank you for allowing me the opportunity to testify as a proponent of SB 347.

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV), is a statewide organization dedicated to the goal of ending domestic violence and sexual assault in Kansas. This organization represents 30 domestic violence programs across Kansas. We strongly support SB 347, as it provides for necessary legal protection for the smallest victims of domestic violence, the children. I have included the KCSDV background paper with my testimony for your review. Jan Guthrie will review our proposed amendments to SB 347.

Currently, Kansas law does not recognize that a presumption of joint custody is invalid where one parent has abused the family with violence. The child of a violent parent is a child at significant risk. Among the most frequently cited reasons by battered spouses for initiating divorce proceedings is that they have seen the effect of domestic violence on their children. Even if the violent parent never hits or threatens to hit the child, it damages a child to see one parent brutalized by the other.

*Sen. J. L. Combs
1-31-96
Attach. 4*

Unfortunately, domestic violence rarely ends with the filing of the divorce petition. As many as 75% of the domestic violence calls made to law enforcement occur after the battered spouse has separated from the abuser. Furthermore, we know that abuse of children by a batterer is more likely when the marriage is dissolving, the couple has separated, and the violent parent is highly committed to continued dominance and control of the mother and children. (Bowker, Arbitell, and McFerron, 1988).

Custody litigation becomes one more weapon for the batterer. Shared or joint custody, when there is a history of domestic abuse, sets the stage for continued power struggles, intimidation, and violence. In many of these cases, victims are ordered to try to resolve custody and visitation differences through mediation. Although mediation is a wonderful tool to use in other cases, battered women are better protected from future violence by adversarial rather than conciliatory divorce processes (Ellis, 1987).

You will be hearing testimony from a few victims of domestic violence today. I want to assure you that this is not an isolated problem; similar stories of trauma to children are heard throughout every region of this state. When KCSDV Legislative Committee first reviewed this proposed legislation, every member program present stated that they have similar cases in the areas they serve. If you would be interested in talking with a victim from the area you represent, please contact me or your local program, as we would be happy to make those arrangements.

Senate Bill 347 can make the difference between a devastating judicial decision and one that protects victims and their children as they strive to lead violence-free lives.

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AN ANALYSIS OF PROVISIONS CONCERNING DOMESTIC VIOLENCE IN STATE CUSTODY STATUTES:

Column Number and Explanation

- The statute requires courts to consider evidence of domestic violence or abuse of a spouse when making child custody or visitation determinations.
- The statute contains a declaration of public policy concerning frequent contact with both parents and encouraging shared parental responsibilities, or a statutory preference or presumption for joint or shared custody, or both.
- The statute provides that domestic violence is contrary to the best interests of a child or to a stated preference for joint or shared custody, or the statute prohibits an award of joint custody if there is evidence of domestic violence.
- The statute contains "friendly parent" provisions requiring courts to consider which parent is more likely to encourage frequent and continuing contact with the other parent.
- The statute contains one or more presumptions concerning family violence; for example, a presumption that joint custody is not in the best interest of the child if there is evidence of family violence or a rebuttable presumption that no perpetrator of domestic violence shall be awarded custody.
- The statute contains a provision that addresses safety concerns of family members, for example, placing the burden of proof on the person who has committed an act of domestic violence to provide that visitation will not endanger the child.

States	Section	#	#	#	#	#
		1	2	3	4	5
Alabama	ALA. CODE § 30-3-2 (1994)					✓
Alaska	ALASKA STAT. § 25.24.150 (1994)	✓			✓	
	ALASKA STAT. § 25.20.090 (1994)	✓			✓	
Arizona	ARIZ. REV. STAT. ANN. § 25-332 (1994)	✓		✓	✓	✓
California	CAL. FAMILY CODE §§ 3000-3399 (West 1995)	✓	✓			✓
Colorado	COLO. REV. STAT. ANN § 14-10-124 (West 1994)	✓	✓	✓	✓	✓
	COLO. REV. STAT. ANN § 14-10-129 (West 1994)					✓
Connecticut	CONN. GEN. STAT. ANN. § 46b-56a (West 1994)		✓			
Delaware	DEL. CODE ANN. tit. 13, § 705A (1994)					✓
	DEL. CODE ANN. tit. 13, § 706A (1994)	✓				
District of Columbia	D.C. CODE ANN. § 16-914 (1994)	✓				✓
Florida	FLA. STAT. ANN. § 61.13 (West 1995)	✓	✓	✓	✓	✓
Georgia	GA. CODE ANN. § § 19-9-1 to 19-9-5 (1994)				✓	
Hawaii	HAW. REV. STAT. § 571-46 (1994)	✓				✓
Idaho	IDAHO CODE § 32-717 (1994)	✓				
	IDAHO CODE § 32-717B (1994)		✓	✓		✓
Illinois	ILL. ANN. STAT. ch. 750, para. 5/602 (Smith-Hurd 1994)	✓		✓	✓	
Iowa	IOWA CODE ANN. § 598.41 (West 1994)	✓			✓	✓
Kansas	KAN. STAT. ANN. § 60-1610 (1993)	✓	✓		✓	
Kentucky	KY. REV. STAT. ANN. § 403.270 (Michie/Bobbe-Merrill 1994)	✓				✓
Louisiana	LA. REV. STAT. ANN. § 364 (West 1994)	✓			✓	✓
Maine	ME. REV. STAT. ANN. tit. 19, § § 214, 581, & 752 (West 1994)	✓			✓	✓

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- The statute contains a provision that addresses safety concerns of family members, for example, placing the burden of proof on the person who has committed an act of domestic violence to provide that visitation will not endanger the child.

States	Section	#	#	#	#	#	#
		1	2	3	4	5	6
Massachusetts	MASS. GEN. LAWS ANN. ch. 208, § 31 (West 1994)	✓					✓
Michigan	MICH. COMP. LAWS ANN. §§ 722.23, 722.26a & 722.27a (West 1994)	✓			✓		✓
Minnesota	MINN. STAT. ANN. § 518.17 (West 1995)	✓	✓	✓	✓	✓	
	MINN. STAT. ANN. § 257.025 (West 1995)	✓					
Mississippi	MISS. CODE ANN. § 93-5-24 (1993)		✓				
Missouri	MO. ANN. STAT § 452.375 (Vernon 1994)	✓	✓		✓		✓
	MO. ANN. STAT § 452.400 (Vernon 1994)						✓
Montana	MONT. CODE ANN. § 40-4-212, 40-4-222 & 40-4-224 (1993)	✓	✓	✓			
Nebraska	NEB. REV. STAT. § 42-364 (1995)	✓					
Nevada	NEV. REV. STAT. §§ 125.460, 125.480 & 125.490 (1993)	✓	✓				
New Hampshire	N.H. REV. STAT. ANN. § 458:17 (1993)	✓	✓	✓			✓
New Jersey	N.J. STAT. ANN. tit. 9 § 9:2-4 (West 1995)	✓	✓		✓		✓
New Mexico	N.M. STAT. ANN. § 40-4-8 (Michie 1994)						✓
New York	N.Y. DOM. REL. LAW § 240 (McKinney 1995)						✓
North Carolina	N.C. GEN. STAT. § 50-13.1 (1994)						✓
North Dakota	N.D. CENT. CODE § 14-09-06.2 (1993)	✓		✓		✓	✓
	N.D. CENT. CODE § 14-5-22 (1993)						✓
Ohio	OHIO REV. CODE ANN. § 3109.04 (Anderson 1994)	✓			✓		
	OHIO REV. CODE ANN. § 3109.051 (Anderson 1994)						✓
Oklahoma	OKLA. STAT. ANN. tit. 10 § 21.1 (West 1995)	✓	✓			✓	✓
	OKLA. STAT. ANN. tit. 43 §§ 112 & 112.2 (West 1995)				✓	✓	

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5. The statute contains one or more presumptions concerning family violence; for example, a presumption that joint custody is not in the best interest of the child if there is evidence of family violence or a rebuttable presumption that no perpetrator of domestic violence shall be awarded custody.
6. The statute contains a provision that addresses safety concerns of family members, for example, placing the burden of proof on the person who has committed an act of domestic violence to provide that visitation will not endanger the child.

July 14, 1995

States	Section	# 1	# 2	# 3	# 4	# 5
Pennsylvania	23 PA. COHS. STAT. ANN. § 5303 (1994)	✓			✓	✓
Rhode Island	R.I. GEN. LAWS § 15-5-16 (1994)	✓		✓		✓
Texas	TEX. FAM. CODE ANN. §§ 14.021, 14.07 & 14.081 (West 1994)	✓	✓	✓	✓	
Utah	UTAH CODE ANN. §§ 30-3-10 & 30-3-10.2 (1994)				✓	
	UTAH CODE ANN. § 30-3-34 (1994)					✓
Vermont	VT. STAT. ANN. tit. 15 §§ 650, 665 & 666 (1993)		✓		✓	✓
Virginia	VA. CODE § 20-124.3 (Michie 1994)	✓			✓	
Washington	WASH. REV. CODE ANN. § 26.09.191 (West 1995)	✓				✓
	WASH. REV. CODE ANN. § 26.10.160 (West 1995)	✓				✓
West Virginia	W.VA. CODE § 48-2-15 (1994)					✓
Wisconsin	WIS. STAT. ANN. § 767.24 (West 1994)	✓			✓	✓
Wyoming	WYO. STAT. § 20-2-112 (1994)	✓		✓		✓
	WYO. STAT. § 20-2-113 (1994)	✓		✓		✓

Laura
Emery #5

Tim Emmert, Chairperson
Senate Judiciary Committee
Room 514S
Kansas State Capitol
Topeka Kansas

Dear Mr. Chairperson and Committee in favor of Senate Bill #347

I believe it is essential that the court ordered mediation in cases where domestic violence is present is inappropriate. My personal experience with the mediation was traumatic. My divorce took nine months to be final and in the process of the divorce my attorney and my ex-husbands attorney requested mediation. I agreed to go and give it a try, though I knew that it would be fruitless. My ex-husband was and is a control freak. We had a domestic incident two weeks prior to our first year anniversary. We were both ordered to attend the ATB program through Safehouse in Pittsburg. The mediation process took place almost exactly one year from the date of our domestic incident. The court appointed mediator was from Crawford County, her name is Brenda Chapel. My ex-husband took control of the meeting almost immediately. We were seated in a small office of the judicial center located in Parsons Kansas. We were seated in three chairs in front of a desk, my ex whose name is Victor, got up and moved around to the chair behind the desk, assuming the "teacher" "boss" or otherwise "in charge person" seat. He and the mediator talked as if I weren't in the room, he went on to describe I had

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Mental problems and was in need of mental counseling. I began to cry and asked the mediator if we could take a break and go get a drink of water. Her reply was "Well we could but it won't get any better." Which led me to think she had no intention of controlling the situation which is what I thought she was supposed to be doing. The mediator and Victor set up a plan for visitation for my then one year old son, without asking me for my input or suggestions.

Each of my suggestions was shot down by one or the other of them. I continued to cry throughout the meeting which lasted about an hour. I finally realized that I was not in the room, and sat quietly waiting for it to be over.

When Brenda, the mediator, announced that they had a workable plan and the meeting was over, I told her to draw up the papers and have them sent to my attorney. I had no intention of signing those papers, I only wanted out of the room and away from the two of them.

In summary I feel strongly that the mediation is detrimental to the parties involved, parents and children. I filed for divorce to get away from the control and the court ordered me to be subjected to it in the process of getting out of it.

Thank you for your time.

Laura Emery

#6

SUPPORT OF SENATE BILL 347

January 31, 1996

I would like to thank the committee chairman for the opportunity to speak today in support of Senate Bill 347 and to present some of the difficulties I have encountered in dealing with the judicial system as a domestic violence victim. My name is Melissa Fiscus. My six year old daughter and I reside in Fredonia. After leaving an abusive marriage, I began volunteer work for Safehouse and started a support group for abuse victims in the Wilson County area. I have taught elementary school for 11 years and have seen the effect of domestic violence on our children.

I have been in and out of child custody hearings with my abusive ex-husband for approximately five years and as of this time the problem still has not been solved. I feel that if the court had considered the fact that he was abusive in the marriage and had come from a family with a history of abuse, that he would not have had the opportunity to sexually and physically abuse our daughter within one year of our divorce being finalized. The presiding judge in the divorce case considered the facts of abuse from the marriage to be irrelevant to my ex-husbands' "rights" of joint custody and unsupervised visitation with our daughter. Even after it was proven that my ex-husband had abused our daughter, the court still feels he has "rights" as the biological father to have joint custody and visitation supervised by his current wife. In the court's eyes, they are only required to restrict his contact with her in order

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to prevent the reoccurrence of the abuse. This means that my daughter, "the victim" has to spend time with a man who has established an abusive relationship and continues to be abusive. The fact that his current wife supervises the visitation is of no consequence since he also controls and manipulates her. I would like to see the court recognize the victims' right to live in an abuse free environment where they are no longer controlled by a violent, manipulative person.

Joint custody in a relationship with a history of abuse is impossible. I was manipulated, humiliated, intimidated and controlled by an abusive man for seven years of marriage. Now the court expects all of those issues to be laid aside and for us to be able to work together in the best interest of our child. When you are a victim of an abusive relationship, you are always under the control of the abuser, the roles of the perpetrator and victim do not change because the marriage has ended in divorce. In his eyes he is still right and in control. For the victim she is still being controlled and the only thing that changes is that he no longer resides in her home. How can my daughter and I or any other parent and child be expected to heal and continue with life when we constantly have to deal with this abusive behavior?

Using mediation in an abusive relationship is ineffective primarily for the same reasons as with joint custody. The bottom line is, in an abusive relationship the perpetrator uses violence, manipulation, intimidation and control to get

his way in any given situation and the victim has learned to give in to his way in order to keep the violence from escalating. The two individuals in the situation will never be able to communicate as long as the perpetrator controls the victim. My experience with the mediator was a waste of time and money. I left the experience feeling intimidated, worthless and beaten again by my ex-husband and the system. I know it is possible to bargain and mediate physical possessions, but I don't understand how you can mediate the safety and well being of a child with a person who has proven to be abusive.

My expenses from lawyers, mediators, counselors, and doctors are an extreme financial burden. I have taken a second job in order to pay the bills that have resulted from leaving an abusive marriage. My daughter and I continue to have stress related illness, which we cannot heal from because we continue to have to deal with the abuse from my ex-husband. My daughter and I continue to see counselors to deal with anger, aggression, depression and low self-esteem problems. My daughter's problems are especially apparent after she has had contact with her father. Teachers, friends, and people in our community can pinpoint when she has been with her father because of the drastic change in her personality. Her counselor states that this will continue as long as she is in her current visitation situation.

As I continue to work with other victims of abuse and work with children of abuse, I find that my daughter and I are not alone. Children sit in my classroom and cannot

concentrate on their learning because of the trauma and fear they deal with in their life. They fear and worry about what will happen when they have to face their abuser again. I have talked to other women who face the same issues and fears that I do. I know a woman who suffered stab wounds that were inflicted by her ex-husband that required over 100 stitches, yet the court only punished her abuser with four years of probation. Now she and her children live and wait in constant fear of his next attack.

In closing I must ask how can victims continue to function in a system that allows the abuser to experience no consequences for their abusive behavior? How can we expect our children to live, grow and learn in this unhealthy environment? I think it is time that our judicial system be forced to take a look at the entire picture of abusive relationships in order to prevent any further victimization and damage. I think it is time for the abuser to be responsible for his actions.

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6-13

Battered Women Task Force

Domestic Violence and Sexual Assault Programs

at the YWCA

Box 1883 • Topeka, KS 66601-1883 • (913) 354-7927

TESTIMONY IN SUPPORT OF SB 347 January 30, 1996
Members of the Senate Judiciary Committee

The Topeka YWCA's Battered Women Task Force has had an intervention program for domestic batterers for over 12 years. The last seven years we have used an educational model based on a successful program in Duluth, Minn. We currently offer 6 classes for males who batter their partners and 1 class for females who batter their partners. Presently over 100 are enrolled, 10% are self referred and 90% are court ordered to attend. They attend weekly sessions for 6 months.

Since 80% of those batterers report that they grew up in homes where there was violence between their parents, we are convinced that intervention with abusers is critical not only to the safety of their partner but also is a factor in modeling for children how adults treat each other.

We have learned from our work with batterers that the central dynamic of most abusive relationships is a desire to have power and control over the partner. Physical violence is only one tactic used to dominate a partner. We have learned that most abusers do not lose control and become violent but rather use violence to control their partner and their children.

It is very difficult for domestic abusers to be accountable for their violence toward their partners. They are very good at denying, minimizing and blaming their partners rather than admitting their own violent behavior. (That has been more consistent among male abusers than the female abusers in our program). It is very important that batterers be held accountable for their behavior and that victim safety be a high priority with batterers' treatment programs. If they can not admit that they have been abusive then it is difficult to recognize past and present abuse and to change future behavior.

It has been our experience that intervention programs are difficult to fund so there will not be programs accessible throughout the state. For those offering intervention we feel strongly that exposure to the tenets presented by those of us with the most experience in this area is of great importance in offering standardization for rehabilitation of perpetrators.

The Kansas Coalition against Sexual and Domestic Violence is asking that agencies wishing to offer treatment programs for domestic batterers complete a minimum of 16 hours training from our coalition. With the experience we have had in providing services for victims and intervention for their perpetrators we believe our expertise makes us the appropriate organization to offer accreditation for those providing intervention for this special population of perpetrators.

Respectfully,
Marilynn Ault, Program Director
Supported by the United Way of Greater Topeka

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S.O.S.

inc.

Services for Victims of Sexual & Domestic Violence

Chairperson Emerit and Members of the Committee:

Thank you for consideration of Senate Bill 347. My name is Shelley Mann, Coordinator of Children's Services at the SOS shelter in Emporia. I urge you to vote in favor of Senate Bill 347 for the following reasons: First of all, Children need to be loved, nurtured, encouraged, accepted and safe. They need support, stability, encouragement and comfort. They need trust, positive role models, the ability to express feelings safely, and the chance to be a child. These are not "extras", they are the absolute essentials.

I am here today because I have spent the last 6 ½ years working with children who are getting the exact opposite of what I've listed above. I have spent these years working directly with child victims of domestic violence. Domestic violence is a term that really does not do justice for what these children are experiencing. It is actually domestic terrorism.

There are many different types of abuse; physical, sexual, verbal and emotional... and these types of abuse can be directed toward anyone in the home. Abuse is about control, domination, degradation, manipulation and fear. The fact is, it makes NO difference who the abuse is directed toward in the home. The children will suffer as if every ounce of it were directed toward them. Unfortunately, many times it is directed toward them as well. The children feel the pain. They suffer psychological damage, and may suffer physical injury as a result of domestic violence. I bring this up because, in an abusive relationship there is an extreme imbalance of power. This imbalance of power does not suddenly disappear after a separation or divorce. In fact, abuse of children by a batterer is more likely when the marriage is dissolving, the couple has separated and the husband/father is highly committed to the continued dominance and control of the mother and children. (Bowker, Arbiteli and McFerron, 1988).

Current child custody and visitation laws are based on the assumptions that parents negotiate from relatively equal positions of power, and that it is in the best interest of children to allow joint custody after divorce. We know that when a couple has a history of domestic violence, they do not relate to each other in this way. What we need to keep in mind is the fact that there are millions of children each year who are witnessing this, and are damaged by parents who use violence to maintain power and control over their families. It makes no difference what type of abuse it may be, and we must never underestimate how extremely damaging verbal and emotional abuse is. Children are often manipulated, confused and put in the middle.


These children suffer low self-esteem, sadness, depression, stress disorders, poor impulse control, and feelings of powerlessness, and they are at a high risk for alcohol and drug use, sexual acting out, running away, isolation, loneliness, fear, and suicide. (Peter Jaffe, David Wolfe & Susan Kaye Wilson, Children of Battered Women. To fight this cycle, we need your support.

Support Groups • Shelter • 24hr. Hot Line • Information & Referral • Preventive Education

316-342-1870

P.O. Box 1191 Emporia, Kansas 66801

1-800-825-1295

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#119

Testimony Presented in SUPPORT of

SB 347

January 31, 1996
Maggie Hardie, Development Director
SAFEHOME, Overland Park, Johnson County, KS

Mr. Chairman and Members of the Committee:

Please accept my appreciation for this opportunity to speak in support of SB 347. By granting your support to SB 347, you will be responsible for granting yet one more opportunity for the children of the State of Kansas to have a voice in the determination of their own destiny.

Be absolutely sure that you understand that this legislation makes no assumptions as to gender of the abusive parent. We realize that either mother or father may be found to be the perpetrator of violence in the home toward a spouse. This bill only presumes that the guidelines set forth are in the best interest of the child and does not, in any way, presume a gender-biased predilection for violence

Too often, our children are allowed to be used as pawns in divorce and custody cases, more specifically, in cases where one parent has a history of abuse toward the other parent. Too often, our children are placed in the position of having their hearts and lives devastated by pressures placed upon them by an abusive parent.

In divorce or custody proceedings, since the perpetrator of violence has limited access to their battered spouse to attempt to compel reconciliation, they often choose the visitation arena as a place in which to attempt coerced reconciliation or to penalize the battered partner for refusal to reconcile. As a consequence, visitation must be a very protected situation both for the children from violent homes and their custodial parent.

As I draw your attention to the portion of the bill which addresses supervised visitation requirements contained in this important legislation, may I share with you for a moment, the reality of a Johnson County family who has not had available to them the benefits this bill will afford.

After living in a marriage where she frequently was forced to endure a shotgun held to her head, severe beatings, and where other, more unspeakable horrors were common occurrences, a young mother of two divorced her abusive spouse. Because of threats of death to herself and her two young children, and no remedy available to address the issues of custody and visitation, the violence was never mentioned in the subsequent divorce. The judge, not having the benefit of accurate and complete knowledge of the case, issued typical custodial and visitation orders granting the abusive spouse unsupervised visitation every-other weekend, and on alternating holidays from school.

The past four years have challenged those two youngsters to the core of their being. In an effort to extend his control over his former wife through control of the children's emotions, the children were continually barraged by violent verbal attacks upon their mother. At one point, in an effort to escape being subjected to this continual verbal beating of their mother, the children refused to see their father. The father, possessing adequate financial resources, took the mother to court on a charge of contempt. The judge issued the contempt citation, giving the mother one more opportunity to compel her children to visit their father before being jailed for the contempt.

After two more years of enduring the never-ending verbal and emotional abuse by their father, the future for these once potentially happy and successful children is no longer so bright. To escape the court mandated visits, the girl, who is now fifteen years old, recently ran away from home. She keeps in touch

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with her mother through infrequent telephone contact. The boy, who is now eleven, is currently charged with assaulting his father. During a visit, the father threatened to beat the boy if he did not follow a direct order. The boy, fearful of harm, picked up a butter knife and begged his father not to come any nearer. Now, granted, I was not present during this incident. But, I cannot, for the life of me, imagine an eleven year old boy being too terribly threatening to his six-foot tall, two-hundred-pound father. This abuser is still making his former wife pay for divorcing him through manipulation and control of the children

Just imagine for a moment if you will, where these two children might be today if only they had been afforded the safety and security of not having to endure this level of on-going abuse in an unsupervised environment with their father.

We understand the concern of non-abusive parents who may be embroiled in child custody proceedings, that this bill, in some way, may limit their rights as responsible, caring fathers or mothers. But, to them and to you, I would reiterate that this bill, in no way can intrude upon a non-abusive spouses right to share in the love and parenting of their children.

A man I have a great deal of respect for in my community, Ed Eilert, the Mayor of Overland Park recently stated, "In determining public policy matters, we should always remember that our communities' tomorrows depend upon today's children." I ask you, as you consider S.B. 347 to not only consider the children who so desperately require the protection this bill will afford them, but to also consider the tomorrows of your own community and the tomorrows of the Great State of Kansas.

I would close by requesting your thoughtful consideration to the following statement:

A parent's right to visitation cannot take precedence over a child's exposure to danger or the threat of harm. It is essential to balance children's needs for protection from psychological and physical harm with their need for a positive, supportive relationship with both parents.

10
Senate Judiciary Committee

January 31, 1996

Re: SB347

Chairman Emert & Other Committee Members,

I was a victim of mental and physical abuse. My ex-husband definitely saw our child as a way to continue controlling me. As a result, approximately two and a half years ago we entered a lengthy court battle for custody. We were ordered by a judge to seek mediation. I did not realize that it would be, but mediation turned out to be one of the worst parts of the whole ordeal. I am a strong willed woman who speaks her mind, however, during mediation I was incredibly intimidated and shaking like a leaf. I can still remember pleading with my mediator (before our second session) to assure me that he would not let me give up everything because I was obviously incapable of standing up for myself when my ex-husband was involved. After our first session, the mediator came out of his office and gave me a hug (I was in tears) and said, "He is really a hard person to deal with, isn't he?". All of our mediation sessions consisted of me giving up things and my ex insisting that he was going to "have it all, including our son". My ex was a master at manipulating me. I recall a time when, in the midst of an argument, he put a gun to his head and told me he was going to "blow his brains out" because of me. It wasn't until two years later, in court, I learned that the gun was not loaded. I really believed that gun was loaded. When a woman is put in a bargaining position with someone who has always ultimately won, she loses the tools she needs to negotiate a fair settlement.

The only thing that was worse than the actual mediation was when I found out that if my lawyer was going to try to undo the damage I had done, we were going to need to have "a damn good explanation" as to why I would agree to something in mediation and then change my mind.

Originally, I was awarded joint custody with our son residing in my home. Since then, my ex-husband disappeared for several months. I pursued legal action to get sole custody. I have always worried in the back of my mind, what if Shane was on life-support in the hospital or in some other life-threatening situation? Joint Custody means that we would have equal legal rights to decide important issues. Could my ex-husband put aside his desire to control (in our sons best interest). Unfortunately, I know the answer to that question. After everything I have been through with him, I was willing to spend the money to go back to court and get the decision that I should have gotten the first time around.

My ex was, by my suggestion, awarded very liberal visitation rights initially. Since then, he has -- neglected to pay child support, does not attempt to contact his son, has lost at least three jobs and has quit paying any of his bills. He disappeared to the extent that his parents hired a detective to find him and (from what I have

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been told) is drinking very heavily. This, and other behavior, certainly contradicts the model citizen that he presented himself to be in court. In December of 1995 a judge suspended his visitation rights. It would have been nice if this were done right in the first place. I did not relish the thought of going back to court, nor the additional attorney fees (I have plenty of those already).

I would like to highlight a statement that I read in a report regarding SB347 that especially applied to me:

Most perpetrators of domestic violence are adept at appearing rational and focused while the victims show the emotional effects of living in the irrational atmosphere of violence they cannot control or understand.



I was an emotional mess through the whole process. I was receiving threatening phone calls and notes. I couldn't eat or sleep. All because I believed that this man was going to make my life the living hell that he promised he would. He was calm and cool. If it had not been for Safehouse's help and counseling, I'm afraid I would have lost my child to a man with severe emotional problems.

Unfortunately, I've learned that my story is not an unusual one. I urge you to help protect the women who have gathered or will gather the courage to leave an abusive relationship. Passing SB347 will take the "unloaded gun" -- mediation, out of the hands of an abuser.

I want you to know that my life is really wonderful now. I have bought our first house, I am doing great at work and I am thoroughly enjoying watching my children grow. I have a sense of calm that's been missing for a very long time.

Sincerely,

Dana L. Edwards
201 W. Kansas
Pittsburg, Kansas 66762
(316)231-9406



My name is Debra Bates-Lamborn: I am a wife, a mother, a business owner, vice-president of the Lansing Historical Society and am a member of the board of education for Lansing U.S.D. 469. I am a survivor of domestic violence.

In 1987, I divorced a man who verbally abused and beat me during the 18 months of our marriage. Into this violent family life my son, Glen was born. It was because of my concern for his welfare and safety that I divorced his father. I watched my ex-husband's other son replicating the same violence displayed by his father and I didn't want my son to learn that same behavior. Since this time, my ex-husband's stepson has also been charged twice with domestic violence. I worry when my son is away on these visitations as to what kinds of behaviors he is being exposed to. According to the Kansas Coalition Against Sexual and Domestic Violence, a domestic violent situation can be explosive and life threatening. Therefore, every time my son visits, I always have these concerns especially when he was younger and couldn't tell me what was happening.

Despite the documented cases of physical abuse in the home, domestic violence was never an issue in the original divorce. I was not allowed to claim domestic violence as an issue in the original divorce because it is an issue that makes people uncomfortable and is best swept under the carpet.

I remarried in 1990 to a non-abusive and caring man. Since that time, Glen's father has repeatedly taken me back into court over issues of child visitation and custody. He has successfully used the court system to exert his control and power over me. Our problems of family violence have not ceased because we are divorced. Instead, he is using child custody and visitation as a new forum for the continuation of the abuse. This situation is all too typical of cases of domestic violence according to the Kansas Coalition Against Sexual and Domestic Violence.

Because of the issue of visitation, which is still not resolved, my ex-husband continues to verbally abuse, intimidate, and outright threaten me over issues of visitation. We have gone through five attorneys, three judges and five court-ordered psychiatrist because I dared to divorce this man. My legal costs as of to date exceed \$20,000.

The problem of family violence does not go away simply by granting a divorce. By allowing joint custody, the parties involved have to come to a 'friendly' agreement on the issue that is satisfactory to both parties. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power, and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence.

My abuser left me with no self-respect and no self-esteem at the age of 33. Through therapy and several thousand dollars it has taken me six long years to regain what I had lost. I can only imagine what affect he his having on my nine-year-old son.

I urge you to consider HB2465/SB 347. It is not in the best interest of those abused during a violent marriage to allow the abuse to continue.

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Attach H



State of Kansas

Office of the Attorney General

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ATTORNEY GENERAL

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TESTIMONY OF
JULIENE A. MASKA
STATEWIDE VICTIMS' RIGHTS COORDINATOR
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 347
JANUARY 31, 1996

On behalf of Attorney General Carla J. Stovall, I urge your support for Senate Bill 347. This bill would allow the courts to consider acts of violence before awarding custody of children.

Spouses or parents are not the only victims in domestic violence incidents. Children who live in violent homes are more likely to experience developmental delay, speech and language problems and other physical ailments. Children who grow up in homes where there is a violent spouse are 53 percent more likely to be arrested as an adolescent. Children who witness violence between their parents are 38 percent more likely to be arrested for violent crime as adults.

During 1994, 24 domestic violence programs reported 6,444 children had witnessed abuse of one of their parents. It is critical that decisions on awarding custody should also include the detrimental effects that domestic violence has on the child. Oftentimes when the abused parent leaves the batterer, the violence becomes more severe. It is imperative that we protect the children. In 1991 Congress passed a unanimous resolution that states should pass laws that when evidence of spousal abuse is given, it should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent. This bill is a step in the right direction to protect children living in homes where domestic violence occurs.

Attorney General Stovall and I urge your support for Senate Bill 347. Thank you for your consideration.

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National Congress For Fathers and Children Topeka Chapter

#12
#13
Senate Bill No. 347

I am here as an advocate for all parents, particularly fathers, grandparents, and especially all of the children and grandchildren of this great state of Kansas.

Trying to interpret this bill as gender neutral is very difficult. It is discriminatory toward fathers by the fact that fathers are accused of and selectively prosecuted of abuse by District attorneys more than mothers. Divorce can bring out the worst in both parties, and when custody of the children are involved, which equals monetary rewards to the victor, abuse of laws such as bill #347 are guaranteed to occur. There are ample laws available and if a legitimate abuser is not kept in check, then the fault lies with the judicial system and not the lack of another vague law.

Page 7, line 9 , the word fear is an emotion and law should not be based on emotions but black and white evidence.

Page 4, line 33, the accused is assumed guilty and is denied a way to facilitate a way to be rejoined with their children, since one parent has temporary custody. An amendment I would like to add , The use of children to extort an inequitable property settlement, should constitute a modification in temporary custody, and the legal kidnapping of children through the temporary order should be limited to one week instead of the common three-plus month separation the children must currently endure.

Page 7, line 43, less likely, Heads, you win . Tales, you lose, sole custody.

Page 12, line 23-41, This is infringing on the courts authority and discovery process. line 31, do you sue the professional if he does counsel? and again someone is guilty by accusation.

Forms of abuse are many; physical, mental, and verbal, and I do not condone legitimate abuse. The abuse laws being written are undermining parents ability to be parent, teachers to reprimand, and may even cause a police officer to be in violation of abuse laws, because everyone occasionally is angry, rude and insulting, and should not be punished by a class B misdemeanor and the attorneys fees that go along trying to protect oneself from vague laws. The District Attorney in Shawnee county has even classified some abuse charges as de minimus-insignificant infraction-minor violation, especially when they are against a woman.

I urge the judicial committee to not pass this bill.

Greg DeBacker President

Topeka Chapter National Congress of Fathers and Children

Greg DeBacker 286-3029; Joseph Ledbetter 232-6946

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Attach 13