Approved: 3-7-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 12, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)
Senator Vancrum (excused)
Senator Parkinson (excused)
Senator Martin (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: Kathy Kirk Office of Judicial Administration
Larry Rute, Kansas Legal Services, Inc.
Phil Alquist, National Congress of Fathers and Children
Flora DeBacker
Orville Johnson
Ruth Landau, Deputy District Court Trustee
Ron Smith, Kansas Bar Association

Others attending: See attached list

The Chair called the meeting to order.

A motion was made by Senator Bond, seconded by Senator Reynolds to approve the minutes of January 30, January 31, and February 1, 1996. The motion carried.

Bill Introductions:

The Chair requested a bill that would provide for the sharing of information among agencies dealing with juveniles.

A motion was made by Senator Feleciano, seconded by Senator Reynolds to introduce the above as a Committee bill. The motion carried.

Senator Emert requested a bill on behalf of Senator Clark that would permit county commissioners to provide by resolution that inmates in jails are required to pay four dollars ($4.00) for the first medical visit.

A motion was made by Senator Bond, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

The Chair recommended a bill that would change the penalties on the drug grid to penalties levels VII and VIII on the non-drug grid.

A motion was made by Senator Oleen, seconded by Senator Reynolds to introduce the above as a Committee bill. The motion carried.

Senator Petty requested a bill that would change the requirement that county commissioners physically identify boundaries.

A motion was made by Senator Petty, seconded by Senator Feleciano to introduce as a Committee bill. The motion carried.

Senator Petty requested a bill that would place prosecutors under the same protective provisions from harassment as presently exists for judges.

A motion was made by Senator Oleen, seconded by Senator Reynolds to introduce as a Committee bill. The

motion carried.

Senator Harris recommended a bill on the request of Sedgwick County matrimonial lawyers concerning the division matters of property in divorce cases.

A motion was made by Senator Oleen, seconded by Senator Reynolds to introduce the above as a Committee bill. The motion carried.

Senator Feleciano recommended the introduction of a bill that would remove the ceiling of age seventy for the retirement of judges and provide that the commission on judicial qualifications may commence proceedings inquiring into a judge's competency.

A motion was made by Senator Feleciano, seconded by Senator Reynolds to introduce the above as a Committee bill. The motion carried.

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

The Chair explained that the proponents for this bill were heard on January 31, 1996, so the conferees at this hearing will largely be opponents to the bill. The Chair stated that there are a couple of people presenting amendments to **SB 347** and they will testify after the opponents.

Mr. Phil Alquist testified in opposition to **SB 347**. The conferee stated that **SB 347** establishes guidelines that only a social worker would know. The conferee stated that one parent will lose custody. The conferee cited the language in Section 1(1), "Wilfully attempting to cause bodily injury, ---et al." The conferee stated that this language is a huge umbrella called domestic violence. The conferee stated that this bill is not gender neutral as supporters stated. The conferee stated that the solution may be in criminal court where a jury of peers determines if one or the other parent is abusive, and not a social worker. The conferee concluded by stating that this bill would sacrifice the father's right to see and have his children. (Attachment 1)

Flora DeBacker testified in opposition to **SB 347**. The conferee stated that this bill is designed for further abuse by divorcing women. (Attachment 2)

Orville Johnson testified in opposition to SB 347. Mr. Johnson explained the difficulties he incurred in the court system. The conferee stated that it was necessary for him to plead with the court many times for child visitation rights. Mr. Johnson stated that there is a bias against men in the court system. (Attachment 3) The conferee displayed posters depicting the father/child relationship. The conferee stated that **SB 347** is not about domestic violence, it is about the feminist movement. The conferee then discussed the response to his letter published in the Topeka Capitol Journal.(Attachment 3) The conferee stated that his letter was in response to a hearing in the Kansas House, March 18, 1993, dealing with issues of confidentially of court reports.

The conferee discussed line 42, page one, concerning who the supervising person cannot be. The conferee questioned the reason for not capitalizing, "Kansas coalition against domestic violence," on page 2, line 13. The conferee stated that the name of that organization should be capitalized as it is a proper name. The conferee stated that **SB 347** did not appear gender neutral and the conferee restated his strong opposition to the bill.

Rob Neiswender provided written testimony in opposition to **(SB 347)**. (Attachment 4)

Kathy Kirk, OJA, stated that OJA supports the philosophy and general intent of **SB 347**, however, OJA recommends some amendments that would provide proper clarification of the bill. Some of the recommendations are:

- Including some of the prior amendment suggestions by KCSDV
- Making terms and definitions consistent throughout
- Consideration of overall financial condition of the parties
- Allowance for more discretion, based upon factual evidence, for custody decisions
- Development of an accrediting task force
- Removal of the Protection from Abuse Act from this bill
- Allowance for voluntary decisions of the victim in areas of visitation, counseling, and mediation
- Delation of certain terms related to counseling and therapy

The conferee stated that the Office of Judicial Administration is fully supportive of this bill, with some

refinement and a little more study. The conferee stated that OJA's bottom line recommendation is that this bill be sent to a subcommittee and that some of the amendments which the KCSDV, Kansas Legal Services and the Office of Judicial Administration have been working on together be fully considered. The conferee continued by stating that judges need direction, definition, and clarification. The Office of Administration is doing a full force effort on domestic violence education for the judiciary. (Attachment 5)

Mr. Larry Rute, Kansas Legal Services, testified in support of **SB 347** with amendments drafted with representatives of the Office of Judicial Administration. Mr. Rute requested that the Chair consider establishing a subcommittee to review the proposed amendments. (Attachment 6)

The Chair announced that a subcommittee will be assigned to consider this bill.

Mr. Joseph Ledbetter presented written testimony and requested that the National Congress of Fathers be notified of subcommittee activity on this bill. (Attachment 7)

Possible action on bills previously heard:

SB 513--Support orders not subject to attorney liens

Ruth Landau, Deputy District Court Trustee, testified in support of **SB 513**. The conferee related that **SB 513** simply clarifies the scope of the lien allowed under K.S.A. 7-108, and then discussed the three circumstances to which this bill would apply. (Attachment 8) Ms Landau also noted written testimony supporting **SB 513** provided by Ann McDonnald (Attachment 9)

SB 514--Marital property to include professional goodwill

Mr. Ron Smith cited *Powell v Powell* and stated that Kansas is one of only seven states that takes the minority view. Mr. Smith proposed an amendment requested by Steve Blaylock, Attorney, Wichita, that would make the bill effective for those cases filed on or after the effective date of this act. (Attachment 10)

Mr. DeBacker testified that goodwill should stay with a person.

The Committee members discussed professional goodwill in circumstances where it has monetary value.

A motion was made to move the bill favorably with the amendment concerning its effective date, by Senator Petty, seconded by Senator Harris. The motion carries.

SB 530--Food donors liability

The Committee members discussed the proposed amendments attached to Senator Vancrum's written testimony of **SB 530**. The proposed amendment would change line 28 by striking out ~~free distribution~~ and inserting *ultimate distribution to needy individuals*. On lines 31 and 39 the second amendment would add *gross negligence or* intentional misconduct.

A motion was made by Senator Feliciano, seconded by Senator Harris to move both amendments. The motion carries.

Senator Oleen stated that she will add a floor amendment.

A motion was made by Senator Feliciano, seconded by Senator Harris to move the bill favorably as amended. The motion carried.

The Chair adjourned the meeting at 11:10 a.m.

The next meeting is scheduled for February 13, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-12-96

NAME	REPRESENTING
KATHY KIRK	CWA
FRANCES Kastner	Ks Food Dealers
Rosilyn James-Martin	SRS-Children & Family Services
Ruth Landau	District Court Trustee
Peggy A. Elliott	Jo Co. Dist Ct. Trustee
David E. Yoder	Harvey County Dist. Court Trustee
JACK R.A.	KLS
Janice Guthrie	Kans Coal. Against Sexual & Domestic Violence
Monica [illegible]	KS.
Phil [illegible]	Topeka, Ks.
Drey D. Bachs	Topeka, KS
Flora D. Barker	Topeka Ks
[illegible]	Fatten Topeka Ks
Matt Sloper	Judicial Council
[illegible] Johnson	ETHICS MEN
Trish Bledsoe	Kansas Coalition Against Sexual and Domestic Violence
Claudia Reedenbaugh	(NCFC) Burlingame Ks
Kelly Kultala	KTLA

TO: COMMITTEE MEMBERS

FROM: PHILLIP W. ALQUIST, CONCERN JOINT CUSTODY FATHER

I want to thank you for taking time to listening to me this morning on domestic violence in the homes of children. This is a tragedy whenever it occurs but I come here to let reason not bias against men determined the law. SENATE BILL No. 347 is bias against men, is extremely vage as is the defination of "Domestic Violence" and does not address the problem of false accusation of one or the other of "Domestic Violence" in which over 80% of all claims are false.

"Domestic Violence" as stated in Senate Bill No. 347 means the occurrence of one or more of following acts between between persons who reside together, or who formerly resided together. Does that mean grandparents that abuse one of the parents can not have visitation of their grandchildrens because of what happen 20 or 30 years earlier?
What if the parent that has custody of the child or children dies? As this law is written neither the father or the grandparents could have custody of the child or children because of some real or false accusaton years ago.

"Supervised visitation" has the parent perptrating domestic violence not have any relative, friend, therapist or associate of the person, guilt by association is what the bill means. If you know the person, even a trained therapist, you can't supervise a abusive parent and child but the other parent can have anybody even a convict supervise the child as long as the convict did not abuse the parent or child.

New Sec. 3 In any domestic violence case, all court costs, attorney fees, evaluation fees and expert witness fees incurred in furtherance of this act, shall be paid by the pertrator of the domestic violence, including all coat of medical and psychological care for the abused spouse, or for any of the children, necessitated by the domestic violence.
This is just one more law that we do not need and will only lead to more false accusation in the hope to puninish the other party in the form of higher attorney bills and more medical bills and we don't even make the average houseburgler pay attorney fees and medical bills because they didn't do bodilyharm, just made you live in fear the rest of your life and spend more money on security. As you can see this bill is only tough on parents

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Attach. 1

not on criminals unless that what you want, to treat all parents as criminals if they show any anger towards their spouses or children.

This law give the other parent permission to leave the state if the other parent looks the wrong way towards the spouse or children or tries to punish the children or correct the child for their own good, like playing with fire or running out in to a busy street. The other parent tells the judge what the other parent did and the judge can agree to let the parent and child move out of state. I am talking about extrem cases here but this is what the new law reads and believe me many parents would use it.

"Maintence" This is a outdated practice and has very little value in todays world where women can and do work at the same pay as men. This is just a redisibution of wealth, only in extreme cases should this be use.

"Repeated child support misuse" There should not be any "repeated" child support misuse. One time and only one time and that can be considered a material change of circumstances which justifies modification of a prior order of child custody and child support. Nowhere in Senate Bill No. 347 does it says "Repeated Domestic Violence" and that can be considered, just one time and that it's , your guilty.

One other thing to think about in this not very thought out bill, but what about the abusive teenager who terrorize his parents and siblings?

Senate Bill No. 347 is based on feelings and emotions, not on law or reason. We have laws all ready that deal with domestic violence without getting the divorce court and divorce lawyers involved and the children could be a lot worse off with this bill.

Thank you for your time about this important subject and I will stand for any questions you might have.

Phillip W. Alquist
3336 s. w. Plass Av.
Topeka, Ks. 66611
(913) 266-4324

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Testimony in opposition of Senate Bill 347

Where do children really learn violence? Many believe it is learned behavior. Most children spend the early years of their lives with their mothers or in day care managed by women. In elementary school it is primarily women who influence children.

Is it possible that we are seeing an increase in violence in this country because the biological father is being forced out of children's lives? Would you be angry if one of your parents forced the other one away when you were a child?

Judges can not make good informed decisions because too many false statements are made. The mother is in a very powerful position to influence the children and the children have seen that they have already lost one parent, so they are very cooperative so as not to lose their mother.

How do we know that the mother is not abusing the children behind closed doors? There is no accountability for child support, so the child may also be neglected in lieu of alcohol, cigarettes, or drugs.

This bill is designed for further abuse by divorcing women. If there are broken bones, blood or other trauma, there are laws already in place to remove the perpetrator. Too often there is no sign of abuse, just the fact that she wants the "jerk" out of her life and she does not want to share the children with the father or the ex-grandparents.

Respectfully,

Flora DeBacker

Sen. Jud.
2-12-96
Attach 2

LETTERS

12-6-93

What happened to due process?

Did you ever think that your liberty or liberty interests could be taken away without due process? Think again!

Well intentioned, I'm sure, lawmakers have set a dangerous precedent by enacting K.S.A. 60-1615 paragraph c. Let me explain what this law does. In a child visitation or custody battle, it allows the employees of at least two very controversial state bureaucracies, SRS and Court Services, to write reports containing unsworn-to, unverified, inaccurate, incomplete and out-of-context statements. These reports are apt to be filled with outright lies, as they are based almost solely on "he said" "she said" interviews, after telling the interviewees, "You can tell me anything you want, because only the court and I will know what you said."

Now comes the more frightening part! The power-grabbing court systems, in some districts, do not even allow the attorneys representing the parties to have a copy of this report or even discuss what "they saw in it at a glance" with their clients. I ask you, how can an attorney represent his clients if he cannot even discuss with them what ridiculous allegations have been made against him or her?

The minutes of the Kansas House Judiciary Committee hearing on March 18, 1993, will show that I testified before it about this rape of justice that involves a Supreme Court-defined "liberty interest" protected by full measures of "due process," which includes "right to confrontation" that has been ruled to include "right to cross examine" along with face-to-face confrontation.

At the hearing, Chairman Michael O'Neal could not believe that there was anything keeping the parties from getting copies of these reports, routinely. But there are three things: Judicial Department rules, K.S.A. 60-1615 paragraph c, and judges' orders.

Committee member and attorney David Adkins of Leawood even supported my contentions by stating that as an attorney he has taken the position that if he can't share the information with his client, he doesn't want to see the information. He stated that in Johnson County the reports are shared with the attorneys with the understanding they are not to be shared with the clients.

O'Neal replied that if reports are going out without judicial oversight, and the stamp is being put on them that it is confidential and cannot be disclosed by the attorney, then there is a problem. He requested that the Office of Judicial Administration (Kay Farley of that office was present) check into this and report back. I had confronted OJA earlier, and they are not going to voluntarily give up one ounce of power. We need a law! We need legislated laws, not adjudicated laws!

> Incompetent bureaucrats can ruin your life and leave you with no recourse. Do something now

Having the Office of Judicial Administration look into the problem is very much like having the fox watch the hen house.

The Office of Judicial Administration is a large part of the problem. They print a court service officers' manual which states that the reports are confidential. (And remember, the CSO interviewers state this unequivocally before the interviews begin.)

Don't wait until you, your children or your grandchildren are in such a devastating situation and at the mercy of some incompetent or unscrupulous state employee who believes that the state should have absolute power over you. Find out what you can do to rectify this atrocity, today. — **ORVILLE E. JOHNSON, Topeka.**

THE DAY THIS LETTER CAME OUT IN THE TOPEKA CAPITAL JOURNAL I WAS ON THE PHONE FROM 8:30 IN THE MORNING UNTIL AFTER 9:30 AT NIGHT WITH PEOPLE WHO HAD SUFFERED FROM SUCH NIGHTMARES THAT SRS & COURT SERVICES CAN CAUSE.

SEE HB 2225—

Sen. Jud
2-12-96
Attach 3

LAW OFFICE OF

Davis & Manley

116 North Star
El Dorado, Kansas 67042

Norman G. Manley
Wallace F. Davis

David A. Ricke

(316) 321-4920

July 29, 1986

Orville E. Johnson
1945 North Rock Road
Wichita, Kansas 67206

Dear Orville:

This morning I got a call from Ross McIlvain and he informs me that you have quit your job at Dick Hatfield Chevrolet. Neva seems to be concerned that on your next scheduled visit with the kids you intend to take them away from her. They seem to want assurances that:

1. You will continue to pay your child support as ordered; and

2. Your visits be limited to the immediate locality.

Please contact me at your first opportunity and let me know what is going on and we will plan some sort of strategy to deal with the current situation, if possible.

Sincerely,

DAVIS & MANLEY

David A. Ricke

David A. Ricke

DAR:de

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Senate Judiciary Committee

Jan. 31, 1996

Opponent as written SB 347

Rob Neiswender
3741 Truman
Topeka, Ks. 66609

913 266 2134

I have to pay child support, but I can not have visitations with my daughter.

Why? Why?

Mother stalls

Mother stonewalls

No reason at all other than I am a man and her mother says I can not see her.

AND THE COURT LETS HER MOTHER HAVE HER WAY.

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#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.

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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.

Page 4

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.

Page 7

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

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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?**

Page 11

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.

#3

February 12, 1996
Testimony to the Senate Judiciary Committee
Kathy Kirk for the Office of Judicial Administration

SB 347

I would like to thank the members of the committee for allowing the Office of Judicial Administration to testify today. Our office fully supports the philosophy and general intent of this bill. Domestic violence, its effect on parties and the judicial system, has long been a concern of the highest priority. There is a need for this bill in order to give the district court clarification on procedures necessary to provide fair determination of cases which involve domestic violence.

However, we feel that refinements of the present draft are necessary in order to provide proper clarification. As drafted, parts of this bill may be open to broad interpretation, causing confusion and ultimately, a greater burden on the courts. Some concern exists in relation to the current draft that allegations of domestic violence would increase.

In summary, I recommend the follwing amendments as presented in the attached draft:

- Inclusion some of the prior amendment suggestions by KCSDV
- Making terms and definitions consistent throughout
- Allowance for consideration of overall financial condition of the parties
- Clarification of the standards and certifying entity for training programs
- Allowance for more discretion, based upon factual evidence, for custody decisions
- Removal the of Protection from Abuse Act from this bill
- Allowance for voluntary decisions of the victim in the areas of visitation, counseling, and mediation
- Deletion of certain terms related to counseling and therapy

In conclusion, the Office of Judicial Administration supports the general intent of this bill and recommends it be referred for review by a subcommittee for further refinement.

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SENATE BILL No. 347 By Committee on Ways and Means 2-21

AN ACT concerning domestic violence; relating to child custody, visitation and counseling; amending K.S.A. 23-602, 23-603, 23-607, 60-1610, 60-1616 and 60-1617 and repealing the existing sections.

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

New Section 1. As used in this act:

(a) ``Abused parent'' means that parent in an abusive relationship who has not committed domestic violence.

(b) ``Court'' means any district court having jurisdiction over the parents or child, or both, at issue.

(c) ``Domestic violence'' means *a demonstration to the court by a preponderance of the evidence* the occurrence of one or more of the following acts between persons who reside together, or who formerly resided together :
(1) Wilfully attempting to cause bodily injury or wilfully or wantonly causing bodily injury;

(2) wilfully placing, ~~by physical threat,~~ another in fear of imminent bodily injury;

(3) rape, as defined in K.S.A. 21-3502, and amendments thereto.
Domestic violence shall also include sexual abuse as defined herein. 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 family violence of the other parent.

(d) ``Sexual abuse'' means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult who has custody or control over the child or is in a position of parental

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authority. A person in a position of parental authority who knowingly permits or acquiesces in sexual abuse by the other parent or by any other person also commits sexual abuse.

(e) ``Supervised visitation'' means face-to-face contact between an abusive parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction or humiliation of either the abused parent or the child. The supervising person ~~shall not~~ *may* be any relative, friend, therapist or associate of the parent perpetrating domestic violence with the *voluntary* consent of the abused parent, ~~the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, a court may order that the supervising person shall be a law enforcement officer or other competent professional. The person who perpetrated domestic violence shall pay any and all cost incurred in the supervision of visitation. In no case shall supervised visitation be overnight or in the home of the violent parent.~~

(f) ``Program of intervention for perpetrators'' means:

(1) A specialized program that:

(A) Accepts perpetrators of domestic violence into treatment or educational classes to satisfy court orders;

(B) offers treatment to perpetrators of domestic violence; or

(C) offers classes or instruction to perpetrators of violence; and

(2) is a program accredited ~~through the Kansas coalition against sexual and domestic violence.~~ *by the domestic violence task force. The domestic violence task force shall be made up of one representative from the attorney general's office, Kansas Coalition Against Domestic Violence, Kansas Legal Services, a district court judge, and a representative from one of the state law schools.* To ensure that the program for intervention of perpetrators is governed by a philosophy consistent with giving highest priority to the safety of the victim and full accountability of the

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perpetrator, accreditation requirements shall include, but not be limited to:

(A) Previous work with victims of family violence; and

(B) ~~a minimum of~~ *Up to* 16 hours training by *a program accredited by the domestic violence task force.* ~~the Kansas coalition against sexual and domestic violence.~~

~~New Sec. 2. Whenever a parent, who is a party to a proceeding pursuant to article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, is arrested or indicted for a criminal offense in which the victim is such parent's child or such child's other parent,the court, upon a motion of the prosecuting attorney or other parent, shall issue a restraining order pursuant to the protection from abuse act. Such restraining order shall prohibit all contact between the arrested or indicted parent and the other spouse and all children of the family, except for specific purposes set forth in the order, which shall be limited to communications expressly dealing with the education, health and welfare of the children. Further, all such orders shall prohibit the arrested or indicted parent from intentionally going within 50 yards of the home, school, place of employment or person of the other parent and the children or within 50 feet of any of such parent or children's automobiles except as may otherwise be necessary for supervised visitation, as further ordered, or except as otherwise necessitated by circumstances considering the proximity of the parties' residences or places of employment.Supervised visitation may be reinstated, upon a motion for a hearing by the arrested or indicted parent, if the court finds such supervised visitation to be in the best interests of the child.~~

New Sec. 3. In any domestic violence case, all court costs, attorney fees, evaluation fees and expert witness fees incurred in furtherance of this act, *may be ordered to* ~~shall~~ be paid by the perpetrator of the domestic violence, including all costs of medical and psychological care for the abused spouse, or for any of the children, necessitated by the domestic violence.

Sec. 4. K.S.A. 23-602 is hereby amended to read as follows: 23-602.

(a) Except as provided in subsection (c), the court may order mediation of any contested issue of child custody or visitation at any time, upon the motion of a party or on the court's own motion. A hearing officer in a proceeding pursuant to K.S.A. 1986 Supp. 23-701 may order mediation of a contested issue of child visitation in such a proceeding.
(b) If the court or hearing officer orders mediation under subsection (a), the court or hearing officer shall appoint a mediator, taking into consideration the following:

(1) An agreement by the parties to have a specific mediator appointed by the court or hearing officer;

(2) the nature and extent of any relationships the mediator may have with the parties and any personal, financial or other interests the mediator may have which could result in bias or a conflict of interest;

(3) the mediator's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(4) the mediator's training and experience in the process and techniques of mediation.

(c) In any proceeding brought pursuant to article 16 chapter 60 of the Kansas Statutes Annotated, and amendments thereto, ~~no spouse or parent who satisfies the court that such spouse or parent or any of the children has been the victim of domestic violence, as defined in section 1, and amendments thereto, perpetrated by the other spouse or parent shall be ordered to participate in mediation by the court.~~ *if the court finds by a preponderance of the evidence, that one spouse has been the victim of domestic violence perpetrated by the other parent, the other spouse or parent shall not be ordered to participate in mediation by the court unless such parent voluntarily requests mediation.*

Sec. 5. K.S.A. 23-603 is hereby amended to read as follows:
23-603.

(a) A mediator appointed under K.S.A. 1985 Supp. 23-602 and amendments thereto shall:
(1) Inform the parties of the costs of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;

(5) advise each of the parties to obtain independent legal advice;

(6) except as provided in subsection (e), allow only the parties to attend the mediation sessions;

(7) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

(8) ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(9) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure; and

(10) screen for the occurrence of domestic violence between the parties.

(b) The mediator may meet with the children of any party and, with the consent of the parties, may meet with other persons.

(c) The mediator shall make a written summary of any understanding reached by the parties. A copy of the summary shall be provided to the

parties and their attorneys, if any. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. Any understanding reached by the parties as a result of mediation shall not be binding Upon the parties nor admissible in court until it is reduced to writing, signed by the parties and their attorneys, if any, and approved by the court. If the parties are not represented by attorneys, the mediator shall provide to the court or hearing officer the written summary of any understanding signed by the parties, which, if approved by the court or hearing officer, shall be incorporated in the order of the court or hearing officer.

(d) The mediator may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or divorce proceedings unless the subsequent representation, counseling or treatment is clearly distinct from the mediation issues.

(e) A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that domestic violence has occurred unless:

(1) Mediation is requested by the victim of the alleged domestic violence;

(2) mediation is provided in a specialized manner that protects the safety of the victim by a ~~certified counselor~~ *mediator* who is trained in domestic violence *issues*; and

(3) the victim is permitted to have in attendance at the mediation a supporting person of such victim's choice, including but not limited to an attorney or advocate. *Should the victim choose to have an attorney present, the other parent may also be have an attorney present.*

Sec. 6. K.S.A. 23-607 is hereby amended to read as follows:
23-607.
Except as provided in section 3, and amendments thereto, the costs of any mediation ordered under K.S.A. 1985 Supp. 23-602 shall be taxed to

either or both parties as equity and justice require, unless the parties have reached a reasonable agreement as to payment of the costs.

Sec. 7. K.S.A. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) Minor children. (1) Child support and education. The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court,

including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (a)(1)(B), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, ``bona fide high school student'' means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Every order requiring payment of child support under this section shall require that the support be paid through the clerk of the district court or the court trustee except for good cause shown.

(2) Child custody and residency. (A) Changes in custody. Subject to the provisions of the uniform child custody jurisdiction act (K.S.A. 38-1301 et seq., and amendments thereto), the court may change or modify any prior order of custody when a material change of circumstances is shown.

(B) Examination of parties. The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235, and amendments thereto.

(3) Child custody or residency criteria. The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have a written agreement concerning the custody or residency of their minor child, it is presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreement is not in the best interests of the child.

(B) In determining the issue of custody or residency of a child, the court shall consider all relevant factors, including but not limited to:

(i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

(ii) the desires of the child's parents as to custody or residency;

(iii) the desires of the child as to the child's custody or residency;

(iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

(v) the child's adjustment to the child's home, school and community;

(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

(vii) evidence of ~~spousal abuse~~ domestic violence. If the court finds ~~evidence of domestic violence, the court shall consider:~~ *that one spouse or any of the children of the parties has been the victim of domestic violence perpetrated by the other parent the court shall also consider:*

(aa) ~~Primarily t~~The safety and well-being of the child and parent who are the victims of domestic violence; and (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.~~ *(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 the court finds that a parent is temporarily absent or has temporarily relocated because of domestic violence by the other parent , the court may disregard that fact as negative in determining residency or custody.*

(4)(A)(i) In determining the issue of custody or residency of a child, a determination by the court by a preponderance of the evidence that one parent has committed domestic violence against the other parent or children of the parties raises a rebuttable presumption that it is not in the best interests of the child to be placed in the sole or joint custody of the parent who perpetrated the domestic violence. The presumption may be overcome by a preponderance of the evidence that:

(aa) the perpetrating parent has successfully completed a program of intervention for perpetrators of domestic violence;

(bb) the perpetrating parent is not abusing alcohol or drugs;

(cc) it is otherwise in the best interests of the child to be placed in the sole or joint custody of the perpetrating parent.

(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 *by a preponderance of the evidence*

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:

(aa) The perpetrating parent has successfully completed a program of intervention for perpetrators;

(bb) the perpetrating parent is not abusing alcohol or drugs; and

(cc) that the best interests of the child requires the perpetrator's participation as custodial parent because of the other parent's absence, mental illness or substance abuse; or

(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 *sole* 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 court shall mandate completion of a program of intervention for perpetrators by the custodial parent. If necessary to protect the welfare of the child, custody may be awarded to a nonparent, as provided in subparagraph (a)(4)(B)(iv).~~

(B) Subject to the provisions of subparagraph (A), the order shall include, but not be limited to, one of the following, in the order of preference:

(A) (i) Joint custody. The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the

parties shall have equal rights to make decisions in the best interests of the child under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

(B) (ii) Sole custody. The court may place the custody of a child with one parent, and the other parent shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent.

(C) (iii) Divided custody. In an exceptional case, the court may divide the custody of two or more children between the parties.

(D) (iv) Nonparental custody. If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502, and amendments thereto, or that neither parent is fit to have custody, the court may award temporary custody of the child to another person or agency if the court finds the award of custody to the other person or agency is in the best interests of the child. In making such a custody order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such custody to a relative of the child by blood, marriage or adoption and second to awarding such custody to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary custody orders are to be entered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for

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

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

(2) Maintenance. The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a

modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event,the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Every order requiring payment of maintenance under this section shall require that the maintenance be paid through the clerk of the district court or the court trustee except for good cause shown.

(3) Separation agreement. If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions for the custody, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the custody, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the

agreement or (B) as subsequently consented to by the parties.

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

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

(2) Effective date as to remarriage. Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 8. K.S.A. 60-1616 is hereby amended to read as follows: 60-1616. (a) Parents. (1) Except as provided further, a parent not granted custody or residency of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would ~~endanger~~ seriously *endanger* the child's physical, mental, moral or emotional health.

(2) If the court finds that a parent has a history of domestic violence, the court ~~shall~~ *may* only allow supervised child visitation with that parent, conditioned upon that parent's participation in a program of intervention for perpetrators. Unsupervised visitation shall only be allowed if it is shown by a preponderance of the evidence that the violent parent has successfully completed a program of intervention for perpetrators, is not abusing alcohol or controlled substances, poses no danger to the child, and that such visitation is in the child's best interests.

In a visitation order, a court may:

(A) Order an exchange of a child to occur in a protected setting;

(B) order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation; and

(C) impose any other condition deemed necessary to provide for the safety of the child, the victim of domestic violence or other family or household member; and

(D) whether or not a visitation is allowed, the court may order the address of the child and victim to be kept confidential.

(3) If any court finds that a parent has sexually abused such parent's child or children, the court shall prohibit all visitation and contact between the abusive parent and the children until such time, following a ~~contradictory~~ hearing, the court finds that the abusive parent has successfully completed a program of intervention for perpetrators designed for such sexual abusers, and that supervised visitation is in the child's best interests.

(b) Grandparents and stepparents. Grandparents and stepparents may be granted visitation rights.

(c) Modification. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

(d) Enforcement of rights. An order granting visitation rights to a parent pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto.

(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 justifies modification of a prior order of child custody.

(f) Repeated child support misuse, effect. Repeated child support misuse may be considered a material change of circumstances which justifies modification of a prior order of child custody.

Sec. 9. K.S.A. 60-1617 is hereby amended to read as follows: 60-1617. (a) Family counseling. (1) Except as provided in subparagraph (2), upon motion by any party or on the court's own motion, the court may order at any time prior to or subsequent to the alteration of the parties' marital status that the parties and any of their children be interviewed by a psychiatrist, licensed psychologist or other trained professional in family counseling, approved by the court, for the purpose of determining whether it is in the best interests of any of the parties' children that the parties and any of their children have counseling with regard to matters of custody and visitation. The court shall receive the written opinion of the professional, and the court shall make the opinion available to counsel upon request. Counsel may examine as a witness any professional consulted by the court under this section. If the opinion of the professional is that counseling is in the best interests of any of the children, the court may order the parties and any of the children to obtain counseling. ~~Neither party shall be required to obtain counseling pursuant to this section if the party objects thereto because the counseling conflicts with sincerely held religious tenets and practices to which any party is an adherent.~~

(2) In any proceeding brought pursuant to article 16, chapter 60, of the Kansas Statutes Annotated, and amendments thereto, no spouse or parent who satisfies the court *by preponderance of the evidence* that such spouse or parent or any of the children, has been the victim of domestic violence perpetrated by the other spouse or parent shall be ordered to participate in *joint* counseling *with the perpetrator* by the court.

(3) A professional who receives a referral or order from a court to conduct *joint* counseling shall screen for the occurrence of domestic violence between the parties.

(4) A professional shall not engage in *joint* counseling when it appears to the professional or when either party asserts that domestic violence

has occurred unless:

(A) Counseling is requested by the victim of the alleged domestic violence;
(B) counseling is provided in a specialized manner that protects the safety of the victim by a ~~certified~~ counselor who is trained in domestic violence; and
(C) the victim is permitted to have in attendance at counseling a supporting person of such victim's choice, including but not limited to an attorney or advocate *Should the victim choose to have an attorney in attendance, the other parent may also have an attorney present.*

(b) Costs. Except as provided in section 3, and amendments thereto, the costs of the counseling shall be taxed to either party as equity and justice require. Sec. 10. K.S.A. 23-602, 23-603, 23-607, 60-1610, 60-1616 and 60-1617 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

#4

TESTIMONY OF

Larry R. Rute
Kansas Legal Services, Inc.
(913/233-2068

SENATE JUDICIARY COMMITTEE

Tim Emert, Chairman

Monday, February 12, 1996
Room 514-S

Mr. Chairman, Members of the Committee, I very much appreciate the opportunity to appear before you today to discuss Senate Bill 347. With the Chairman's permission and if time permits, I would also like to briefly mention at the conclusion of my testimony today some of the concerns that were brought to my attention last week regarding Senate Bill No. 584, relating to confidentiality in alternative dispute resolution matters.

I am Deputy Director and Director of Litigation for Kansas Legal Services, Inc. (KLS). Kansas Legal Services is a private, non-profit corporation dedicated to providing free or low cost legal services to low and moderate income Kansans. Last year our staff attorneys located in twelve (12) field offices throughout the state, provided legal advice and representation to more than 28,000 Kansans, in all 105 Kansas counties.

In any given year, KLS provides advice and representation to a substantial number of individuals seeking resolution of family law matters. In any given year family law cases represent between 9,000 to 11,000 cases. Of that number, cases involving divorce with abuse and custody with abuse requiring Protection Orders totaled between 1,800 and 2,100 cases. As can be seen, our work puts us in touch with scores of victims of domestic violence seeking Protection Orders, support and custody orders, injunctions and divorce.

I have found during my twenty-three years of work as a Legal Services attorney that the plight of the victims of domestic violence has proven to be one of the most difficult issues in which our offices deal. While serving as Director of the Topeka Legal Aid Society in the late 1970's and the early 1980's, I personally handled the majority of the domestic violence cases that flowed through this very busy, active Legal Services office. In conjunction with members of the Topeka Battered Women's Task Force, I was actively involved in assisting in the drafting of the original Protection From Abuse Act legislation. I have joined with other advocates

Sen. Jud.
2-12-96
Attach 6

in calling for ongoing police training in the pervasive role of domestic violence in our society and the need for specialized police domestic violence teams and task forces. A records search of our statistical system reveals that I have personally handled well over 1,000 contested child custody matters for both men and women, a substantial minority of whom involved allegations of domestic violence. I have also been involved with numerous family law related policy matters as a long standing member of the Supreme Court's Child Support Guidelines Committee, Past-President of the Kansas Bar Association's Family Law Section and as current President of the Kansas Bar Association's Alternative Dispute Resolution Section and Chairperson of the Kansas Children's Coalition. It is from this perspective that I come before you today.

SENATE BILL NO. 347

To assist in my preparation for today's testimony, I have reviewed the written testimony previously submitted to this Committee, including the KCSDV proposed amendments to SB 347. I have also consulted with several Legal Services attorneys who are highly involved in domestic violence matters, private attorneys, and an experienced domestic relations counselor and law professor -- all individuals whose judgment I respect and trust. Finally, I have met with representatives of the Office of Judicial Administration to discuss certain refinements to the bill that will, hopefully, help to more specifically refine and resolve some of the domestic violence related problems that the bill seeks to address. To this end, we have drafted amendments to SB 347 that we would like to specifically address this morning. These amendments should not in any way be considered a criticism of the considerable effort that has gone into the drafting of the proposed legislation. We wish SB 347 to proceed forward, but we do hope that our proposed amendments will be given careful consideration. For this reason, it would be helpful if the Chair would consider the establishment of a subcommittee for consideration of our proposed amendments.

At this time I am prepared to answer any questions that the Committee may have with respect to our amendments to Senate Bill 347.

Senate Bill No. 584

Senate Bill No. 584 amends a number of mediation-related statutes to ensure confidentiality within the Alternative Dispute Resolution process. Last week members of the Committee raised several questions in regard to this legislation. The first concern was whether a privilege to refuse to disclose, and prevent a witness from disclosing any communication made within the course of the proceeding could be upheld by a mediator even if the parties consented to a waiver. The second major question was whether actual threats of physical violence that

might occur during the Alternative Dispute Resolution proceeding could be disclosed.

Having taken into consideration the questions expressed by the Committee, I propose the following:

That on Page 1, Line 29, at the close of the paragraph, we add the following sentence, "A neutral person conducting the proceeding shall not be subject to process requiring the disclosure of any matter discussed within the proceedings unless all parties consent to a waiver." This language will hopefully clarify that the privilege can be waived by an agreement of the parties.

I would also recommend modifying paragraph 1 and adding a new paragraph 5 under Subsection (b) found on Page 1, Line 30 et. seq. that would read as follows:

(1) information that is reasonably necessary to allow investigation of or action for malpractice or ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in the case of an action against the neutral person or staff of an approved program that is filed by a party to the proceeding.

In addition, we would suggesting a paragraph (5) under the same section to read:

"(5) A report to the Court of threats of physical violence made by a party during the proceeding." This language would, hopefully, ensure that any threats of physical violence made by one of the parties during a mediation or other alternative dispute resolution proceeding would be reported to the court.

I appreciate the opportunity to appear before this Committee today. I am prepared to stand for questions.

Respectfully submitted,

Larry R. Rute
Deputy Director
Kansas Legal Services, Inc.
712 S. Kansas Ave., Ste 200
Topeka, Kansas 66603
(913) 233-2068
Fax: (913) 354-8311

6-3
6-3

Ref Bill 347 SB

Dear Sen. Emert, 2-5-96

Item

#1 90% of women in Kansas now have the kids!

Important! #2 Most abuse of children is done by Women

#3 The 2nd most abusive group is Step Dads or Boyfriends Not the Natural Dads. (least abusive)

#4 Women wanting this bill simply don't want Dads to see their Kids or Especially

#5 get custody — Heaven Forbid! A Dad in Kansas gets custody Too Rare, already.

#6 a. This is a gender bill and the courts Refuse to recognize Dads as equals even under old bill. DA's are unequal also.

#6 b. Women many times provoke or entrap confrontations with husbands and that will Increase with this Bill; as a pre-emptive Strike to get kids (custody) house and money

It will be the Assault weapon of Choice for all the Divorce Lawyers in Kansas to use against men in all divorces!

— It is really that Bad.

Conclusion Results, More broken, fatherless kids Not less, More Prisons, More Gangs, More teenage runaways and pregnancies.

Please kill this bill; it is bad public Policy

Sincerely

Joseph LeBeau Topeka, Ks

232-6946 Divorced Father of 3 Boys

P.S. I've been thru Ks Court System and NO Justice for Dads

Sen. Jud. Attach. #5

SENATE BILL NO. 513
Senate Judiciary Committee
February 12, 1996

Testimony of Ruth L. Landau
Deputy District Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for this additional opportunity to support Senate Bill No. 513. Please also refer to my testimony of February 6, 1996.

Senate Bill 513 simply clarifies the scope of the lien allowed under K.S.A. 7-108. This lien statute was originally enacted in 1868. Since that time, the District Court Trustee system has been placed into effect for the enforcement and accounting of spousal and child support in domestic cases.

Although as currently written, the statute should only apply in three circumstances:

> ((1) to when an attorney has a lien and comes into the possession of any papers of his or her client;
>
> (2) upon money coming into the hands of the attorney belonging to the client, and
>
> (3) upon the money due the client in the hands of the adverse party,

there have been instances recently where attorneys have attempted to enforce their liens against funds held for child or spousal support by the District Court Trustee, SRS and the District Court Clerk in their capacity as a Court Trustee.

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Across the state, the instances of attempted attorney's liens against child and spousal support have been occasional, but are increasing.

This bill, as proposed, does not affect the attorney/client relationship. It does not restrict the attorney's ability to contract with his/her client for representation and payment. It does not prevent a client from paying an attorney from any funds they have available to them in their possession. It does not prevent the middle class divorce attorney from structuring a settlement agreement with more maintenance, and less attorney's fees, for the maximum tax benefit.

The majority of litigation is contracted for and completed outside of any attorney lien application. Most individuals involved in litigation pay their attorney either up front, contingency, or on a payment schedule agreed to between the client and the attorney.

The filing of an attorney's lien in a normal non-divorce setting assures that an attorney will be paid out of funds recovered by the litigation at the time the case settles. These circumstances arise under contingency contracts (i.e. personal injury, breach of contract, condemnation etc). Most other civil and criminal litigation are hourly contract or pre-paid attorney services.

In divorce situations Model Rules of Professional Conduct 1.5(f)(1) prohibit contingency contracts. The majority of the

divorce clients normally pay a retainer up front, arrange a payment plan, or ask the Court to award attorney fees. If the court awards attorney's fees which are to be paid through the court, they would not be effected by Senate Bill 513.

Even if the Court has made an exception for collection of past due support on a contingency contract contrary to the MRPC 1,5(f)(1), the attorney can still, as they can today, enforce the payment against the contracting and adverse party (a retaining or charging lien just like in non-domestic instances).

There are statutes which allow the enforcement unit to retain a percent of the collected support. However, this is not an attorney fee, but an administrative cost. There would be no instances where S.R.S. would place an attorney's lien as a result of a paternity action, since they initiate litigation to receive the support. An attorney representing a potential father would not enter into a contingency contract since there is no ability to receive a monetary award as an obligor.

If the payment for child or spousal support will be paid directly between the parties, which can be only after a Court finding that the arrangement is in the child's best interest, then an enforcement unit is not involved and this issue does not apply.

In any event, it is only in the limited instances where the client has ignored or is unwilling to fulfil their obligation to the attorney, that the application of the lien comes into play.

Senate Bill 513 will not change the remedy the attorney has against any funds held by the attorney for the client or held by the adverse party. It simply clarifies and prohibits the attorney from involving the District Court Trustee, S.R.S. or Clerk of the Court who process spousal or child support from having to become involved in litigation for fees which ultimately interferes and delays the function for which the enforcement unit was created.

Allowing such an attorney's lien exposes the enforcement unit to liability. Further the enforcement unit would be left with the burden of establishing the propriety and reasonableness of the lien and causes investigation to determine whether or not it has been independently satisfied. This choke in the conduit causes delays. Like a clog in the pipeline it slows down the delivery of support to the persons entitled which defeats the enforcement unit's purpose to forward funds as quickly and efficiently as possible.

In many cases, the enforcement unit issues their own check before the funds are collected on any instrument presented by the obligor. For instance, upon receipt of an out of state check, or any other instrument, the tenth judicial district trustee office issues their own check to the obligees no later than the day after it's receipt, to get the support money to the persons entitled as quick as possible. The point of the enforcement unit is to benefit the children or spouse entitled to the support.

Obligees cannot use the enforcement unit as place to deposit or store their money. There is no ability for obligees to hide money in the trustee's office or to use the enforcement office to avoid creditors or their attorneys.

Allowing and attorney's lien to apply to the enforcement unit would also be treating domestic relations attorney fees different from any other civil or criminal case. Senate Bill 513 as proposed clarifies and treats liens for attorney's fees in domestic relation cases the same as any other case. The attorney can still enforce it's liens against obligor or obligee funds prior to our receipt or after our disbursement.

Furthermore, allowing attorney's liens to apply to the enforcement unit raises questions of equal protection. Is it just the obligee's attorney that can place a lien? or can the Obligor's attorney also file. If that is the case, then the obligor might pay the support to the enforcement unit, and instead of being forwarded for support, it would have to be held by the enforcement office to later distribute to the obligor's attorney, leaving the children or spouse without.

Please support Senate Bill No. 513, let the enforcement unit do what it was created to, process and enforce support. Do not make the enforcement unit a collection agency for domestic relations attorneys. Supporting S.B. 513 maintains the integrity and purpose of the trustee system.

Thank you for your attention and consideration of Senate Bill 513.

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S. B. 513

Before the Senate Judiciary Committee
Hon. Tim Emert, Chair
February 12, 1996

Testimony of Anne McDonald, Court Trustee, 29th Judicial District

I regret that because of the need to appear in court, I cannot be personally present to state my support for S. B. 513. Kansas has long had a public policy favoring the payment of child support over all other debts.

> "This court as a matter of public policy has always vigorously protected the right of a dependent child to receive support from his father."

Mariche v. Mariche, 243 Kan. 547, at 551 (1988), quoting Mahone v. Mahone, 213 Kan. 346, 352 (1973).

> K.S.A. 23-4,109:
>
> (a) An income withholding order issued under this act shall have priority over any other legal process under state law against the same income.

I also believe that the benefits far outweigh the burdens. The benefit is that child support reaches the child and helps supply the child's needs. The burden is that an attorney would have to use another method to collect a fee that is owed. As a practical matter, I inquired of the Clerk of the District Court, Support Division, Ms. Peggy Myers, who has been in that office for over twenty years. She could only remember two attorneys in all that time who had sought to collect their fees from support money in the hands of the Clerk. Certainly clients should pay attorney fees when owed. All we are saying is that payment should not come from money paid and needed for the support of a child.

Please support S.B. 513. Thank you.

Anne McDonald, 710 No. 7th St. Kansas City, Ks. 66101 (913) 573-2992

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Attach. 9

WHITNEY B. DAMRON, P.A.
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February 8, 1996

The Honorable Tim Emert
Senate Committee on Judiciary
Room 143 - North
State Capitol Building
Topeka, Kansas 66612

Re: SB 514 An Act concerning domestic relations; relating to marital property; professional goodwill.

Dear Chairman Emert:

Included with this cover letter is a balloon draft amendment for SB 514 as requested by Stephen Blaylock during his testimony in support of this bill on behalf of the Kansas Bar Association. The intent of the amendment is to clarify that the bill would not affect divorce proceedings filed prior to the enactment of this law.

The amendment is the bold faced language in Section 3.

Please contact either Ron Smith of the Kansas Bar Association (234-5696) or me if you have any questions over this amendment or the bill.

Thank you for your consideration of this amendment.

Sincerely,

Whitney Damron

Whitney B. Damron

WBD:jd
Enclosure
CC: Members of the Senate Committee on Judiciary

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2-12-96
Attach 10

SENATE BILL No. 514
By Committee on Judiciary
1-24

AN ACT concerning domestic relations; relating to marital property; professional goodwill; amending K.S.A. 23-201 and repealing the existing section.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 23-201 is hereby amended to read as follows: 23-201. (a) The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

(b) All property owned by married persons, including the present value of any vested or unvested military retirement pay, *or professional goodwill to the extent that it is marketable for that particular professional,* whether described in subsection

(a) or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto.

Sec. 2. K.S.A. 23-201 is hereby repealed.

Sec. 3. ***This act shall affect only those divorce matters filed on or after the effective date of this act.***

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

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