

Approved: 3/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 17, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Gilmore (excused)
Representative Mayans (excused)
Representative Shriver (excused)
Representative Ruff (excused)
Representative Adkins (excused)
Representative Mays (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chair called the meeting to order and discussed the procedure for the presentation of the Family Law Subcommittee report.

SB 67 **Amendments to the protection from abuse act.**

Representative Presta discussed the subcommittee report and balloon showing the subcommittee's recommendations. Representative Presta noted date and statute reference updates on page one of the balloon. The subcommittee recommends changes to the confidentiality language on page two. Representative Presta stated that the subcommittee recommendation strikes section 3 of the bill. The deleted provision would provide that no temporary order shall have the effect of modifying an existing custody, residency, or visitation order unless there is sworn testimony to support a showing of good cause at a hearing. The change on page 3, line 3 places a time limit on an order cancelling utility service to the residence or household. Representative Presta stated that striking language in section 4 of the bill on page 3 in lines 36 through 43 and on page 4, lines 1 through 14 would return the statute to current law. (Attachment 1) (Attachment 2) (Attachment 3)

A motion was made by Representative Presta, second by Representative Powell to adopt the subcommittee report. The motion carries.

The committee members discussed issues concerning inconsistent language and if there was a definition for the phrase, "good cause." The members discussed limiting the terms of modification on ex parte applications or on motions for temporary orders in a previously issued divorce action. The committee compared the language contained in **HB 2816** with the language in the subcommittee's balloon for **SB 67**.

Representative Garner reiterated the changes presented in the subcommittee's balloon.

Representative Presta explained that the language in the original bill on lines 37 through 14 of pages 3 and 4 needs to be in there to be consistent with lines 20 through 23 on page 2. Representative Presta stated that the new language on pages 3 and 4 of the original bill was there to give the court further guidance on what they can do ex parte. Representative Presta referred to a letter from Charles Harris, Attorney, Kaplan, McMillan and Harris from Wichita who is a member of the Wichita Bar Association's Family Law Committee. (Attachment 4)

The Committee members discussed issues concerning the effect of ex parte Protection from Abuse orders that might change the terms of the divorce in the areas of custody, residency, and visitation. The committee discussed the priority of inconsistent orders. The committee discussed the section of the balloon that changes the language concerning the expiration of the emergency order from "when the court is available or within 72 hours, whichever occurs first," to "5 p.m. on the first day when court resumes court business."

Representative Presta stated that during subcommittee hearings it was unclear as to the intent of section 3, so the balloon language was added. However, after receiving Mr. Harris's letter and further evaluation, it was determined that the language in the original bill should be reinserted which would prevent custody, residency,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 17, 1998.

or visitation orders from being defeated by an ex parte Protection from Abuse action.

A motion was made by Representative Presta, second by Representative Powell to reinsert the language that is in the original bill, the last word on line 36 through line 14 on pages 3 and 4 of the bill (starting with word, "any") and drop the subcommittee language on page 4 of the balloon. Reinsert language of the original bill that was stricken out in the subcommittee balloon in section 3 and include new language for section 3 of the balloon.

Representative Presta moved the motion, a division was called. The motion carries 7 to 6 in favor.

Representative Presta made a motion, second by Representative Powell to recommend SB 67 favorably as amended. The motion carries.

HB 2626 **Court orders during the pendency of a divorce action; including child custody orders**

Representative Presta stated that a bill brief was given for **HB 2626**. Representative Presta stated that this bill amends the divorce code to do the following three things: It restricts the time frame in which a judge could issue an ex parte interlocutory order. When an interlocutory order is issued ex parte, the time to hear a motion to vacate or modify the order would be changed. No ex parte order that changes custody of a child from the custodial parent could be made unless there is sworn testimony showing extraordinary circumstances exist. (Attachment 1)

A motion was made by Representative Presta, second by Representative Powell to recommend HB 2626 favorably for passage. The motion carries.

HB 2627 **Notice of change in a child's residence after parentage has been established**

Representative Presta stated that the provisions in **HB 2627** require notice of at least 21 days before a residence change could take place. Failure to give notice would be civil contempt of the court. The subcommittee did not recommend any changes.

Representative Carmody stated that this bill provides some protection for parents who have never married, they would have to give the same type of notice that is in the divorce code.

During Committee discussion, Representative Carmody stated that this bill is consistent with **HB 2626**, because **HB 2626** page 4, line 9 states that the court may change or modify any prior order of custody when a material change of circumstances are shown, but no ex parte order can change it unless there is extraordinary circumstances.

A motion was made by Representative Presta, second by Representative Powell to recommend HB 2627 favorably for passage. The motion carries

HB 2820 **Persons convicted of murder/manslaughter-parental rights severed.**

Representative Presta reported that this bill was drafted as a result of a situation in northwest Kansas where the father murdered the mother of his children and still had authority over the children. Representative Presta provided a description of the bill.

The Committee member discussed whether involuntary manslaughter should be included in this bill.

Representative Klein made a motion that would conceptually remove involuntary manslaughter as a listed crime on this bill as well as all citations, and statutes referring to involuntary manslaughter. The motion carries.

Representative Presta made a motion, second by Representative Powell to recommend the bill favorably as amended for passage. The motion carries.

The Chair discussed the time frame for voting bills out of the Committee.

The Chair adjourned the meeting at 4:35 p.m.

The next meeting is scheduled for February 18, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 2-17-98

NAME	REPRESENTING
Tami Radch	KU School of Social Work (student)
Ann Iandolo	(student)
Kristin Altar	(student)
Athena Mangano	SRS, CFS
Mary E. Hume	SRS, CFS
R. S. McKinn	SRS, CFS
Bruce Dimmitt	KFL + Independent
Ann Dukes	DOB
Glen A. Cole	KCOA
Jackie Jimenez	social work student (KU)
Pari Ghaser	social work student (KU)
Katy Porter	OJA
KEITH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Ron Smith	KS Bar Assoc
Janet Schalansky	SRS

House Subcommittee Recommendations to S.B. 67

The House Subcommittee recommendations to S.B. 67 would do the following:

1. Strike Section 3 of the bill by deleting on page 2, lines 7 through 26. The deleted provision would have provided that no temporary order shall have the effect of modifying an existing custody, residency, or visitation order unless there is sworn testimony to support a showing of good cause at a hearing.
2. Strike in Section 4 of the bill on page 3: new language in lines 36 through 43 and on page 4, lines 1 through 14, which would return the statute to current law. The new language would have provided that any order entered under the Protection from Abuse Act shall not be subject to modification on *ex parte* application or on motion for temporary orders in any divorce action. Orders previously issued in a divorce action shall be subject to modification under the Protection from Abuse Act only as to those matters subject to modification by the terms of the divorce code and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.

If an action is filed under the divorce code during the pendency of a proceeding filed under the Protection from Abuse Act or while an order issued under the Protection from Abuse Act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by the divorce code that are inconsistent with orders entered under the Protection from Abuse Act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified, and a copy thereof shall be filed in both actions. Both actions may be consolidated under the Code of Civil Procedure.

3. Under the confidentiality provision of the petitioner, page 2, line 2, the Subcommittee recommends adding the language "or both" regarding the plaintiff's address or telephone number.
4. The Subcommittee further recommends the inclusion of a provision to amend K.S.A. 60-3105 which would allow an emergency order to stay in effect until 5:00 p.m. on the first day when the court is regularly open for the conduct of business. At that time, a temporary order may be sought.
5. In addition, the Subcommittee recommends a change on page 3, line 3, to clarify that the court may order a restraining order to prohibit the cancellation of utility services for only 60 days.

H.B. 2626

H.B. 2626 amends the Divorce Code to do the following:

1. A clarifying change would restrict the time frame under which a judge could issue *ex parte* interlocutory orders. After a final judgement, no order could be issued under the interlocutory statute (K.S.A. 60-1607).
2. When an interlocutory order is issued *ex parte*, the time to hear a motion to vacate or modify the order would be changed from the current ten days to 15 days from the request for a hearing.
3. No *ex parte* order that changes custody of a child from the parent who has had custody of the child could be made unless there is sworn testimony showing extraordinary circumstances exist.

Background

A conferee appearing in support of the bill included a representative from the Judicial Council Family Law Advisory Committee. There was no opposition expressed.

The fiscal note indicates no measurable fiscal impact.

H.B. 2627

H.B. 2627 would add a provision to the Kansas Parentage Act which would require a parent who has custody of a child to give notification to the other parent who has custodial or visitation rights at least 21 days before an out-of-state residence change can take place. The 21-day notice, which must be sent by restricted mail, return receipt requested, would also apply when the child is to be removed from the state in excess of 90 days. Notice would not be required to a parent convicted of crimes in which the child was a victim.

Failure to give notice would be civil contempt of court. The court, in addition to punishment under current law, could levy reasonable attorney fees as well as any other expenses incurred by the other parent.

A change of residence or removal to another state, as set out in the bill, could be considered a material change of circumstances to justify modification of a child support or child custody order.

Background

Support for the bill was expressed by a conferee representing the Judicial Council Family Law Advisory Committee. There was no opposition expressed.

The fiscal note indicates only a modest fiscal impact.

As Amended by Senate Committee

Session of 1997

SENATE BILL No. 67

By Committee on Judiciary

1-21

10 AN ACT concerning the protection from abuse act; relating to definitions;
11 confidentiality; orders; amending K.S.A. 60-3102 ~~and 60-3106~~ and
12 K.S.A. ~~1996~~ Supp. 60-3104 and 60-3107 and repealing the existing
13 sections.

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4
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 60-3102 is hereby amended to read as follows: 60-
17 3102. As used in this act, "abuse" means the occurrence of one or more
18 of the following acts between persons who reside together, ~~or~~ who for-
19 merly resided together ~~or who have or has had a child in common:~~

20 (a) ~~Willfully~~ Intentionally attempting to cause bodily injury, or ~~will-~~
21 ~~fully or wantonly intentionally or recklessly~~ causing bodily injury.
22 (b) ~~Willfully~~ Intentionally placing, by physical threat, another in fear
23 of imminent bodily injury.

24 (c) Engaging in any of the following acts with a minor under 16 years
25 of age who is not the spouse of the offender:

26 (1) The act of sexual intercourse; ~~or~~
27 (2) any lewd fondling or touching of the person of either the minor
28 or the offender, done or submitted to with the intent to arouse or to
29 satisfy the sexual desires of either the minor or the offender, or both.

30 Sec. 2. K.S.A. ~~1996~~ Supp. 60-3104 is hereby amended to read as
31 follows: 60-3104. (a) A person may seek relief under the protection from
32 abuse act by filing a verified petition with any district judge or with the
33 clerk of the court alleging abuse by another with whom the person resides
34 ~~or, formerly resided or has or has had a child in common.~~

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35 (b) A parent of or an adult residing with a minor child may seek relief
36 under the protection from abuse act on behalf of the minor child by filing
37 a verified petition with any district judge or with the clerk of the court
38 alleging abuse by another with whom the child resides ~~or, formerly re-~~
39 ~~sided or has or has had a child in common.~~

40 (c) The clerk of the court shall supply the forms for the petition and
41 orders, which shall be prescribed by the supreme court.

2 (d) Service of process served under this section shall be by personal
43 service and not by certified mail return receipt requested. No docket fee

, 60-3105

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Attachment 2

1 shall be required for proceedings under the protection from abuse act.
 2 (e) ~~If the court finds that the plaintiff's address or telephone number~~
 3 ~~needs to remain confidential for the protection of the plaintiff, plaintiff's~~
 4 ~~minor children or minor children residing with the plaintiff, such infor-~~
 5 ~~mation shall not be disclosed to the public, but only to authorized court~~
 6 ~~or law enforcement personnel.~~

[, or both,

7 [Sec. 3. K.S.A. 60-3106 is hereby amended to read as follows: 60-
 8 3106. (a) Within 20 days of the filing of a petition under this act a hearing
 9 shall be held at which the plaintiff must prove the allegation of abuse by
 10 a preponderance of the evidence and the defendant shall have an oppor-
 11 tunity to present evidence on the defendant's behalf. Upon the filing of
 12 the petition, the court shall set the case for hearing. At the hearing, the
 13 court shall advise the parties of the right to be represented by counsel.

14 (b) Prior to the hearing on the petition and upon a finding of good
 15 cause shown, the court on motion of a party may enter such temporary
 16 relief orders in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A.
 17 60-3107 and amendments thereto, or any combination thereof, as it
 18 deems necessary to protect the plaintiff or minor children from abuse.
 19 Temporary orders may be granted *ex parte*. Immediate and present dan-
 20 ger of abuse to the plaintiff or minor children shall constitute good cause
 21 for purposes of this section. ~~No temporary order shall have the effect of~~
 22 ~~modifying an existing custody, residency or visitation order unless there~~
 23 ~~is sworn testimony at a hearing to support a showing of good cause.~~

24 (c) ~~If a hearing under subsection (a) is continued, the court may make~~
 25 ~~or extend such temporary orders under subsection (b) as it deems nec-~~
 26 ~~essary.]~~

Sec. 3. K.S.A. 1997 Supp. 60-3105 is hereby amended to read as follows: 60-3105. (a) When the court is unavailable, a verified petition, accompanied by a proposed order, may be presented to any district judge. The judge may grant relief in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107 and amendments thereto, or any combination thereof, if the judge deems it necessary to protect the plaintiff or minor child or children from abuse. An emergency order pursuant to this subsection may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor child or children shall constitute good cause for the entry of the emergency order.

(b) An emergency order issued under subsection (a) shall expire ~~when the court is available or within 72 hours, whichever occurs first on 5 p.m. on the first day when the court resumes court business.~~ At that time, the plaintiff may seek a temporary order from the court.

(c) The judge shall note on the petition and any order granted, including any documentation in support thereof, the filing date, together with the judge's signature, and shall deliver them to the clerk of the court on the next day of the resumption of business of the court.

27 Sec. 4. K.S.A. [1996] Supp. 60-3107 is hereby amended to read as
 28 follows: 60-3107. (a) The court shall be empowered to approve any con-
 29 sult agreement to bring about a cessation of abuse of the plaintiff or
 30 minor children or grant any of the following orders:

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31 (1) Restraining the parties from abusing, molesting or interfering
 32 with the privacy or rights of each other or of any minor children of the
 33 parties. Such order shall contain a statement that if such order is violated,
 34 such violation may constitute assault as provided in K.S.A. 21-3408, and
 35 amendments thereto, battery as provided in K.S.A. 21-3412, and amend-
 36 ments thereto, and violation of a protective order as provided in K.S.A.
 37 [1996] Supp. 21-3843, and amendments thereto.

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38 (2) Granting possession of the residence or household to a party to
 39 the exclusion of the other party, and further restraining the party not
 40 to be granted possession from entering or remaining upon or in such residence
 41 or household, subject to the limitation of subsection (c). Such order shall
 42 contain a statement that if such order is violated, such violation shall
 43 constitute criminal trespass as provided in subsection (c) of K.S.A. 21-

1 3721, and amendments thereto, and violation of a protective order as
 2 provided in K.S.A. [1996] Supp. 21-3843, and amendments thereto. *The*
 3 *court may grant an order, restraining the party not granted possession*
 4 *from cancelling utility service to the residence or household.*

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

, which shall expire 60 days following the date
 of issuance,

7 (4) Awarding temporary custody *and residency* and establishing tem-
 8 porary visitation rights with regard to minor children.

9 (5) Ordering a law enforcement officer to evict a party from the res-
 10 idence or household.

11 (6) Ordering support payments by a party for the support of a party's
 12 minor child or a party's spouse. Such support orders shall remain in effect
 13 until modified or dismissed by the court or until expiration and shall be
 14 for a fixed period of time not to exceed one year. On the motion of the
 15 plaintiff, the court may extend the effect of such order for 12 months.

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

17 (8) Making provision for the possession of personal property of the
 18 parties and ordering a law enforcement officer to assist in securing pos-
 19 session of that property, if necessary.

20 (9) Requiring the person against whom the order is issued to seek
 21 counseling to aid in the cessation of abuse.

22 (b) ~~If, within the period that an order of support issued pursuant to~~
 23 ~~subsection (a)(6) is in existence, a party files a petition for divorce, sep-~~
 24 ~~arate maintenance or annulment and an application for temporary sup-~~
 25 ~~port pursuant to K.S.A. 60-1601 et seq., and amendments thereto, the~~
 26 ~~order of support shall continue in effect until an order is issued on the~~
 27 ~~application for temporary support or until such earlier time as ordered~~
 28 ~~by the court on motion of either party at any time for good cause shown.~~
 29 ~~If a party has previously commenced an action for divorce, separate main-~~
 30 ~~tenance or annulment prior to commencement of an action under the~~
 31 ~~protection from abuse act, the court may enter, pursuant to the protection~~
 32 ~~from abuse act, an order inconsistent with the order previously entered~~
 33 ~~in the divorce, separate maintenance or annulment proceeding. If an in-~~
 34 ~~consistent order is entered pursuant to the protection from abuse act, the~~
 35 ~~order previously entered in the other proceeding shall be vacated upon~~
 36 ~~motion in the proceeding pursuant to the protection from abuse act. Any~~
 37 ~~order entered under the protection from abuse act shall not be subject to~~
 38 ~~modification on ex parte application or on motion for temporary orders~~
 39 ~~in any action filed pursuant to K.S.A. 60-1601 et seq. and amendments~~
 40 ~~thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-~~
 41 ~~1601 et seq. and amendments thereto, shall be subject to modification~~
 42 ~~under the protection from abuse act only as to those matters subject to~~
 43 ~~modification by the terms of K.S.A. 60-1610 et seq. and amendments~~

1 ~~thereto, and on sworn testimony to support a showing of good cause.~~
 2 ~~Immediate and present danger of abuse to the plaintiff or minor children~~
 3 ~~shall constitute good cause. If an action is filed pursuant to K.S.A. 60-~~
 4 ~~1610 et seq. and amendments thereto, during the pendency of a proceed-~~
 5 ~~ing filed under the protection from abuse act or while an order issued~~
 6 ~~under the protection from abuse act is in effect, the court, on final hearing~~
 7 ~~or on agreement of the parties, may issue final orders authorized by K.S.A.~~
 8 ~~60-1610 and amendments thereto, that are inconsistent with orders en-~~
 9 ~~tered under the protection from abuse act. Any inconsistent order entered~~
 10 ~~pursuant to this subsection shall be specific in its terms, reference the~~
 11 ~~protection from abuse order and parts thereof being modified and a copy~~
 12 ~~thereof shall be filed in both actions. The court shall consider whether the~~
 13 ~~actions should be consolidated in accordance with K.S.A. 60-242 and~~
 14 ~~amendments thereto.]~~

15 (c) If the parties to an action under the protection from abuse act are
 16 not married to each other and one party owns the residence or household,
 17 the court shall not have the authority to grant possession of the residence
 18 or household under subsection (a)(2) to the exclusion of the party who
 19 owns it.

20 (d) Subject to the provisions of subsections (b) and (c), a protective
 21 order or approved consent agreement shall remain in effect until modified
 22 or dismissed by the court and shall be for a fixed period of time not to
 23 exceed one year, except that, on motion of the plaintiff, such period may
 24 be extended for one additional year.

25 (e) The court may amend its order or agreement at any time upon
 26 motion filed by either party.

27 (f) No order or agreement under the protection from abuse act shall
 28 in any manner affect title to any real property.

29 (g) If a person enters or remains on premises or property violating
 30 an order issued pursuant to subsection (a)(2), such violation shall consti-
 31 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
 32 amendments thereto, and violation of a protective order as provided in
 33 K.S.A. [1996] Supp. 21-3843, and amendments thereto. If a person abuses,
 34 molests or interferes with the privacy or rights of another violating an
 35 order issued pursuant to subsection (a)(1), such violation may constitute
 36 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
 37 as provided in K.S.A. 21-3412, and amendments thereto, and violation of
 38 a protective order as provided in K.S.A. [1996] Supp. 21-3843, and amend-
 39 ments thereto.

40 Sec. 5. K.S.A. 60-3102 [and 60-3106] and K.S.A. [1996] Supp. 60-3104,
 41 and 60-3107 are hereby repealed.

42 Sec. 6. This act shall take effect and be in force from and after its
 43 publication in the statute book.

If, within the period that an order of support issued pursuant to subsection (a)(6) is in existence, a party files a petition for divorce, separate maintenance or annulment and an application for temporary support pursuant to K.S.A. 60-1601 et seq., and amendments thereto, the order of support shall continue in effect until an order is issued on the application for temporary support or until such earlier time as ordered by the court on motion of either party at any time for good cause shown. If a party has previously commenced an action for divorce, separate maintenance or annulment prior to commencement of an action under the protection from abuse act, the court may enter, pursuant to the protection from abuse act, an order inconsistent with the order previously entered in the divorce, separate maintenance or annulment proceeding. If an inconsistent order is entered pursuant to the protection from abuse act, the order previously entered in the other proceeding shall be vacated upon motion in the proceeding pursuant to the protection from abuse act.

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, 60-3105

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TOPEKA

HOUSE OF
REPRESENTATIVES

February 17, 1998

Family Law Sub-Committee Report

Bills passed out favorable:

- SB 67** Amendments to the protection from abuse act.
- HB 2626** Court orders during the pendency of a divorce action; including child custody orders.
- HB 2627** Notice of change in a child's residence after parentage has been established

Bills heard that are to be worked:

- IIB 2709** Uniform child custody jurisdiction and enforcement act.
- SB 95** Distribution of child placement investigator's report in divorce proceedings.
- HB 2710** Child in need of care
- IIB 2839** Covenant marriages.
- HB 2816** Shared custody/parenting time
- HB 2820** Persons convicted of murder/manslaughter -parental rights severed.

House Judiciary
2-17-98
Attachment 3

Law Offices
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Charles F. Harris*

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Facsimile (316) 262-7226

February 5, 1998

COPY

~~Mr. Terry Presta
Vice Chairman
House Judiciary Subcommittee on Family law
Room 171-W
State Capitol Building
Topeka, Kansas 66612~~

Re: Senate Bill 67

Dear Representative Presta:

I am a practicing attorney specializing in Family Law in Wichita. I am the Chairman of the Wichita Bar Association Family Law Committee and have been the Chairman of the Kansas Bar Association Family Law Committee in the past. I presently serve on the Kansas Child Support Guideline Advisory Committee and on the Family Law Advisory committee to the Kansas Judicial Council. I have been practicing family law for almost twenty year. As such, I have practiced both before and after implementation of the Protection From Abuse Act.

Senate Bill 67 was the product of extensive discussion within the Family Law Advisory Committee to the Kansas Judicial Council. It came about after several years of experience with the Protection From Abuse Act. I consider the Protection From Abuse Act to be what I call the "Field of Dreams" law, after the movie. If you enact it, the people will use it. What is good in concept has become a law to be used by not only the abused, but the poor, the cohabitants, and the homosexuals, as a quasi divorce. The legislature has not seen fit to enact a procedure for dealing with the ever increasing number of cohabitation situations so the people turned to the PFA for at least temporary solutions to their problems. In Sedgwick County, this has resulted in an average of 1,500 Protection From Abuse cases for the past two years.

This did not present too much of a problem until we began to see situations in which the relief sought in the PFA Temporary Order was not protection from an abuse, but an ex parte modification of an existing custody order was sought. This can have the effect of upsetting an Order that has been entered after an evidentiary hearing where both sides had a fair chance to present their case and the Judge made a ruling based thereon. On the existing Protection From Abuse Temporary Order

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Attachment 4

February 5, 1998

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procedure, the Family Law Advisory Committee felt there was a safeguard needed to prevent these ex parte changes. The Committee therefore suggested the language on lines 21, 22, 23, page two of House Bill 67. This will apply only to cases in which there is an existing Order. It then permits the Court to bring the parties in and address the new issue rather than have the filing party show up with an ex parte order at school and snatch the children, all based on one-sided allegations. The language contained from line 37 on page 3 to line 14 on page 4 is equally important. This addresses how the Court should handle final Protection From Abuse Orders that conflict with existing custody orders. This assures that both sides will be on a parallel track.

In conclusion, our experience has shown that in a portion of cases where there are already existing custody orders, persons using the Protection From Abuse procedure will not hesitate to circumvent the prior order on an exparte basis. These changes submitted correct the problem and restore due process. I urge you and your committee to adopt Senate Bill 67 with these changes intact.

Very truly yours,

KAPLAN, McMILLAN AND HARRIS

ORIGINAL SIGNED BY
CHARLES F. HARRIS

BY:

CHARLES F. HARRIS

CFH:dlh

cc: ~~Mr. Randy Hearrell~~