Approved: March 18, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:10 a.m. on March 12, 1998 in Room 514S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present: Mike Heim, Legislative Research Department
Mary Blair, Committee Secretary

Conferees appearing before the committee: Joseph Ledbetter
Jim Johnston, Wichita
Eva Casebolt
Rev. James Hall, Wheatland Church, Topeka
Wanda Driscoll
Phillip Alquist
Tom Nelson
Mark Shepherd
Buck Reidenbach, National Congress for Fathers and Children (NCFC)
Greg DeBacker, NCFC

Others attending: see attached list

SB 629 - Joint shared custody and parenting time

The Chair briefly summarized **SB 629** and encouraged conferees to focus on the bill and present suggestions they may have for it.

All of the following Conferees are proponents of **SB 629** and urged passage of the bill:

Conferee Ledbetter stated that he assisted in writing **SB 629** and he presented a summary of what the bill will do.(attachment 1) In response to inquiry by a member of Committee regarding similarities between this bill and in kind legislation in other states, the Conferee stated that the bill is not based on other states' bills but that there are some similar laws being introduced in other states.

Conferee Johnston summarized portions of **SB 629** and reviewed proposed amendments to the bill. He noted research on childhood pathology on children of divorce, and the effect of the absent parent. (attachment 2)

Conferee Casebolt presented personal testimony of the problems encountered by her nephew, a single father, when seeking justice from current law. She stated that "father's are being driven out of their children's lives by the court and judges" and discussed her view of the societal results. She cited multiple references from the Internet regarding the subject of **SB 629**. (attachment 3)

Conferee Driscoll stated that "this bill [**SB 629**] is about children being able to share equally of their parent's time." She stated there are "well-publicized statistics" regarding children from broken homes and cited the resulting problems. She stated that **SB 629** gives parents dual parental involvement and "allows parents to prioritize efforts to raise their children in a joint effort." (attachment 4)

Conferee Hall presented brief testimony regarding those who attend his church who are raising children as a single parent. He espoused biblical teaching regarding a child's need for interaction with both parents and stated that **SB 629** works toward that end. (no attachment)

Conferee Alquist discounted several statements and proposals made by Law Professor Linda Elrod including her title as Child Advocate, presenting an assessment of why he believed the way he did. He cited a local newspaper article which referenced local agencies and groups available to instruct parents in "good parenting skills" and to assist families with problems. (attachment 5) He stated **SB 629** will provide a child with equal time for both parents.

Conferee Nelson summarized the emotional, and socio-economic benefits to parents and children that would result from the enactment of **SB 629** (attachment 6)

Conferee Shepherd highlighted significant points of **SB 629** covering the importance of maximizing dual parent involvement and the provision, in the bill, of punitive measures for intentionally making false abuse of child allegations. He also discussed other amendments which he felt should be incorporated into the bill. (attachment 7)

Conferee Reidenback complimented lawmakers on **SB 629** and stated that Kansas leads the way in promoting legislation which would benefit children, single parents, and grandparents as well. He apologized for earlier statements accusing lawmakers of "not being considerate of fatherhood". He stated that this bill addresses nearly all of the concerns members of his association had. He criticized the judiciary and law enforcement community for their indifference to fathers, discussed the effect **SB 140** has had on fathers, and criticized National Organization for Women (NOW) supporters who make false accusations about said fathers. He stated that **SB 629** "narrows the ambiguity that has allowed judges to abuse their discretionary powers" and elaborated on that statement. (attachment 8)

Conferee DeBacker, briefly mentioned he had provided Committee with written testimony which addresses the subject matter of **SB 629.** (attachments, 9, 10, 11)

SB 671 - Civil commitment of sexually violent predators

The Chair briefly summarized **SB 671** and discussed his balloon amendments which request that the bill retain: "review panel, preponderance of evidence, unanimous verdict, and transitional and conditional release of the offenders". He also requested a language change to his balloon so that it states ...the Attorney General "or designee" may file...and the Attorney General "or designee" may rely upon ... (attachment 12) Senator Bond moved to adopt the Chair's balloon along with language changes to "designee", Senator Goodwin seconded. Carried. Senator Pugh moved to strike the new Section I, Senator Feleciano seconded. Carried. Senator Bond moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

The meeting adjourned at 11:05 a.m. The next scheduled meeting is Monday, March 16.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/12/98

NAME	REPRESENTING
Vicki Lynn Helsel	Budget
Eva Casebolt	Shared Custody
Kay Reece	Shared Custody
Kathy Porter	OJA
Flora DeBacker	Grandmother - TAX P.
KEITH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Amy Bollig	KCSDV
Debbie Algust	Grandmother
Phil Algust	Fathers
GREG DEBACKER	National Congress for Fathers & Children
MARK SHEPHERD	SHARED CUSTODY
Wanda Driscoll	Shared Custody
Jim Ohlde	Father - Parent
Kelli Newton	AG
Nancy Lindberg	AG
John Garbaya	SRS
Larrie Ann Brown	KS Govt Consulting
Heather Randall	Whitney Damron, P.A.
Tom Ha	FATHER

Buck Reedyback — NCFC President

Jeff Veatch — NCFC

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/12/98

NAME	REPRESENTING
Jennifer Biemick	Father's Rights

SJ 3-12-98 att#1

IN SUPPORT OF SB-629;

This bill will reintegrate fathers back into the lives of their precious children.

It will curtail arbitrary rulings by Judges who claim best interest of children is to remove one of the two parents from the children.

It will lower divorce rates and keep Kansas children in Kansas.

It will lower the problem of delinquent youth,and the need for more prisons.

It will lower the welfare roles by ending the imposed segregation of fathers from their children.

It will alow more Grandparents and aunts,and uncles to see the affected children and be a source of support for those children.

This is a bill allowing the rule of true equality,and ends Court imposed serfdom and segregation on fathers which is 100% arbitrary and done in defiance of the rights of children to BOTH parents and the right of parents to interact freely and unfetered with their sons and daughters.

This is an excellent bill to stand before the electorate and proclaim loud and clear;"I am for children ,and Equality in our Kansas Courts and laws and that is why I supported this bill!"

Please support both parents being in our childrens lives by passing this bill.

Thankyou,

Joseph Ledbetter, father,veteran,M.P.A.
305 Country Club Drive
Topeka,Kansas 66611
Ph.232-6946

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att 1

TESTIMONY TO SENATE COMMITTEE ON JUDICIARY REGARDING "DUAL PARENT INVOLVEMENT ACT"
SB 629

By Jim Johnston, Wichita, Kansas **March 12, 1998**

- In the INTACT FAMILY, no one questions that both parents are emotionally and financially responsible for their children
- In the INTACT FAMILY, no one questions the need a child has for both parents in their lives
- In the INTACT FAMILY, no one singles out in general, one parent as being more important than the other to the child

WHY SHOULDN'T THESE SAME BELIEFS AUTOMATICALLY CARRY OVER IN THE EVENT OF DIVORCE/SEPARATION? There is no good reason.

This bill specifically creates a "State of Kansas philosophy" through a preamble on page 1 that it believes it is ordinarily in the best interests of the child that "...both parents remain active and involved in parenting", and that parents should be encouraged "...to share in the rights and responsibilities of raising their children after divorce or separation."

Parents are usually at their worst emotionally when they have to come to the tough decisions on how to "parent" their children now outside an intact home. The process of divorce should not do anything to automatically cause a rethinking of the value of each parent to their child that was not an issue in the INTACT FAMILY.

At a time when both parents need support, knowledge and mentoring about raising children together but separate from each other, the current system provides no incentive or statutory requirement to focus on the child's need to both parents, and allows an adversarial legal process to take over the decision-making. Parents need to be PROponents at this point, not OPponents.

By both parents (and their attorneys if applicable) knowing that they will begin this future-oriented parenting planning process by sharing joint legal AND physical custody of the children (absent a legitimate factual reason not to do so) as the starting point, much of the adversarial wrangling that occurs will be diminished or eliminated altogether. The expectation of cooperation will also be set as the standard from which they will develop their parenting plan, mitigating animosity and focusing the parents on their children's needs. Choosing not to cooperate should not be acceptable, and would be considered by the judge in making final initial determinations, as well as in later involvement that may arise. With this as the standard, parents will be in a much better position of understanding the dynamics of what the parenting demands will be, and will be able to weigh the tough decisions from a position of knowledge rather than ignorance which unfortunately is the norm today.

Protections from the small minority of situations where abuse is a factor remain in the bill. Opportunities to opt out of "equal or near equal" parenting arrangements can occur as well either through parental agreement, or due to legitimate factual reasons.

WHO BENEFITS?

CHILDREN

- By retaining both parents active and fully participating in their lives
- By focus being placed on children's needs to both parents
- And as research clearly shows, where there is greater parental involvement, there is significantly greater compliance with child support orders

PARENTS

- Through greater knowledge at the outset of issues around raising children outside the intact home
- By each having the maximum time available with their children fully considered and supported
- By there being less likelihood for litigation later, and
- Through greater ownership in developing the parenting strategy

COURTS

- Through less initial litigation and less relitigation
- By having a clear philosophy guiding actions statewide
- By having less strain on the system and
- By having the parties all focused on the children, and less on an "adversarial scenario"

KANSAS

- By having less crime, drug abuse, juvenile delinquency, etc.
- There will be less burden on taxpayers
- There will be less cost to child support collection and
- There will be a much healthier citizenry

Please read the attachments A & B for suggested amendments to this bill, making it more effective and passable. Also scan the attached research on childhood pathology on children of divorce, and the effect of the absent parent.

PLEASE SUPPORT THIS PRO-CHILD BILL.
Thank you.

ATTACHMENT A

PROPOSED AMENDMENT TO SB 629
(beginning on page 30, at line 21)

(A) Joint *shared* 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~~ *shall* further determine that the residency of the child shall be divided either in an equal *or near equal* manner with regard to time of residency or on the basis of a primary residency arrangement for the child. *If primary residency is ordered by the court, it shall include in the record the specific findings of fact upon which the order for parenting time other than equal or near equal time is based.* The court, ~~in its discretion, may~~ *shall* 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 parents cannot agree on a parenting plan, the court shall effect an order that provides each parent with equal or near equal parenting time, or a parenting schedule based upon primary residency. If primary residency, the court will effect a schedule that maximizes parenting time of the child with the other parent appropriate to the circumstances, and in support of dual parent involvement.* 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.

ATTACHMENT B

PROPOSED AMENDMENT TO SB 629
(page 12 at line 25)

(9) The value of services contributed by ~~the custodial parent.~~ *both parents.*

CHILDHOOD PATHOLOGIES AND DIVORCE
A SAMPLING OF RESEARCH DATA

PSYCHOLOGICAL HEALTH PROBLEMS

1. HIGHER SUICIDE RATE

A.) Teens who attempt suicide similar to non-suicidal teens in age, income, race or religion, are more likely to have little or minimal contact with their father (Study of 752 families by N Y Psychiatric Institute, cited by Hewlett, When the Bough Breaks)

B.) 75% of teens who commit suicide are from single parent homes (Elshtain, The Christian Century, 1993)

2. MORE ALCOHOL AND DRUG ABUSE

A.) 18% of children with strict and involved fathers used drugs

B.) 35% of children without fathers used drugs (1988 UCLA study, cited by Hewlett)

C.) Children in father-absent homes are 4.3 times more likely to smoke as children in father-present (Stanton, Oci, and Silva, 1994 survey of 1037 15-year-olds)

3. PERSISTENT FEELINGS OF BETRAYAL, REJECTION, RAGE, GUILT, PAIN

A.) Two-thirds [of father-absent children] yearned for them, one-half with an intensity we found profoundly moving. (Wallerstein and Kelly, 1980, Surviving the Breakup)

4. LOWER SELF-ESTEEM

A.) Especially for girls (Dr. Robert Fay at NCMC conference, 1992) (Davidson, Life Without Father: America's Greatest Social Catastrophe, Policy Review, 1990)

COGNITIVE/ACADEMIC ABILITY

1. LOWER ACADEMIC ACHIEVEMENT

A.) 38% of elementary students from single parent homes were low achieving, while 23% of both parent children were low achieving (Nat'l Assoc. of Elem Principals report, cited by Hewlett)

B.) 30% of children from father-present homes were high achieving, while only 17% of children from father-absent homes were high achieving.

2. LOWER SAT SCORES

A.) "Dramatic" lower scores for students from father-absent homes (Columbia University and Bowling Green State University study of 295 from father-absent homes and 760 from father-present homes, cited by Hewlett)

3. LOWER IQ AND ACHIEVEMENT

A.) Children who lost fathers before age 5 scored lower on Otis Quick Test and Stanford Achievement Test as junior-high and high-school students (Santrock, 1972) (Hetherington, Cox, and Cox study, 1978) (Cortes and Fleming, 1968)

4. MORE LIKELY TO DROP OUT OF SCHOOL

A.) Children from fatherless homes twice as likely to drop out of school (US Department of Health and Human Services, Survey on Child Health, 1993)

5. LESS LIKELY TO ATTEND COLLEGE

A.) Children with an absent parent less likely to attend post-secondary education (Wallerstein, Family Law Quarterly, 1986)

ANTISOCIAL BEHAVIOR

1. HIGHER RATES OF CRIMINAL BEHAVIOR

A.) Fatherless children are twice as likely to become criminally involved (Margaret Wynn, 1964) -72% of adolescent murderers, 60% of rapists, and 70% of long-term prisoners grew up in father-absent homes (US Department of Justice data, 1991)

2. GREATER DELINQUENCY

A.) 87% of Wisconsin juvenile delinquents are a product of father-absent homes (Wisconsin Department of Health and Social Services, 1994)

B.) 70% of juveniles in state reform institutions grew up in father-absent homes (US Department of Justice data, 1988)

C.) Young black men raised without a father are twice as likely to engage in criminal activities (Hill and O'Neill, 1993) (Matlock in Adolescence)

3. MORE VIOLENT MISBEHAVIOR IN SCHOOL

A.) Children who exhibited violent misbehavior in school were 11 times as likely to live without their father than children who did not violently misbehave (Sheline, Skipper, Broadhead, Aamerican Journal of Public Health, 1994)

CHILD ABUSE

1. GREATER CHANCE OF BEING PHYSICALLY/SEXUALLY ABUSED

A.) Preschoolers living without their biological father were 40 times more likely to be a victim of child abuse as compared to like-aged children living with their father (Wilson and Daly in Child Abuse and Neglect: Biosocial Dimensions, 1987)

B.) Premarital pregnancy, out-of-wedlock childbearing, and absent fathers are the most common predictors of child abuse (Smith, Hanson, and Noble, Child Abuse: Commission and Omission, 1980)

C.) 69% of victims of child sexual abuse came from homes where the biological father was absent (Gomes-Schwartz, Horowitz, and Cardarelli, Child Sexual Abuse Victims and their Treatment, 1988)

MISCELLANEOUS

2. MORE UNWED PREGNANCY

A.) Girls from fatherless homes 111% (over 2X) more likely to have unwed pregnancy (Warren Farrell presentation at NCMC conference, 1992; Hetherington, 1972)

S Jud. 3-12-98 Att #3

TESTIMONY OF EVA M. CASEBOLT
BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE
SPEAKING IN FAVOR OF BILL # 629

A 2-year old child, my great nephew, recently spent his first three days at a licensed daycare center in Kansas.

The father of this child, had kept him overnight before taking him to the daycare center the following morning for his second period of stay. When the father turned the corner on the street approaching the daycare center, the child, after having been there only three prior days, began to cry fiercely and continued to do so until the father drove away after leaving him in the care of the center. The father had the next three days off from his work. But was he allowed to keep his son, bond with him and share his love? Of course not – because a cold decision made by an outsider, a Kansas Judge, decided this child was in a better setting with complete strangers!

This is the same father who provided daily care for this child during the first nine months of his life. He performed all of the duties required in raising a child. Yet, he is not allowed to keep and love his son on these days off from work? This is wrong.

There are also two sets of kind, loving grandparents who can and want to provide care – as they have until this ugly court decision was rendered – but, no, they are not suitable in the eyes of a Kansas Judge. Strangers in a strange environment are better for this child!

The father recently quit his job with sixteen years seniority, excellent benefits and a good retirement plan because his job position was being moved which would force his relocation to another state. He took a job with another company, at a lower salary, for the sole reason of staying near his child so he could be a part of his childhood and "growing up".

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This mans life would make him a poster-boy for 50/50 custody. But he was denied 50/50 custody because the Judge said there was "friction" between him and his ex-wife. Parenting is a God-given right. No Legislature, no ex-wife, no Judge, no Women's Rights Organization has the right to take that away.

Fathers must beg to be fathers. Fathers are driven away by bad laws and bad Judges making bad decisions. Fathers are not allowed to be around to provide love, direction, security and supervision.

I understand why there are dead-beat fathers. I understand why circumstances result in kidnapped children. Fathers are being driven out of their children's lives by the courts and Judges.

What are the results of all this? We see and read it everyday.

Children who grow up with very low self-esteem and a terribly strong sense of insecurity thinking their fathers' do not care for them. So they become victims themselves.

1. They are welfare supported.
2. They become involved in teenage pregnancy.
3. They become drug addicts.
4. They become teenage criminals.

If these horrible situations are lessened by fathers who are treated as equals, isn't this a great win-win situation and a plus for our society?

Children are America's greatest asset. Our future is in their hands. We need to do everything possible to do our best for them.

I grew up in the 1950's when fathers were strong figures. The four situations mentioned previously were virtually non-existent in my generation. Something has happened to drastically change that and I say it is a result of our Courts and our Judges.

50/50 custody puts a child where they should be, on a level playing field in the game of life with both parents. That's the way our society has always intended it should be. We need to be sure we take steps now to assure this always happens.

No research or expert has ever demonstrated that children are better off raised with one parent rather than two, barring parental unfitness.

The evidence is overwhelming for the sake of the children.

Thank you for allowing me to speak.

Please support Bill #629.

Shared Physical Custody References

Raman Autar (R.K.Autar@massey.ac.nz)
Sat, 22 Feb 1997 06:30:06 +0000

- **Messages sorted by:** [date][thread][subject][author]
- **Next message:** PsychMap@aol.com: "Re: custody evaluations"
- **Previous message:** ArthurWyn@aol.com: "Re: custody evaluations"
- **Maybe in reply to:** DvH@newworm.on.ca: "Shared physical custody"
- **Next in thread:** ArthurWyn@aol.com: "Re: Shared physical custody"

Message-Id: <9702220630.AA10663@taurus.psych.nova.edu>

To: arrenn-l@taurus.psych.nova.edu

From: R.K.Autar@massey.ac.nz (Raman Autar)

Subject: Re: Shared physical custody

Date: Sat, 22 Feb 1997 06:30:06 +0000

Here is a list of research references Re: Shared Custody.

Hope it is helpful

1. D.A. Luepnitz. Child Custody: A Study of Families after Divorce. Lexington Books 1982.

Luepnitz studied single parent custody and joint custody. Most single parent children were dissatisfied with the amount of visitation they had, whereas the children of joint custody arrangements seemed reasonably happy with their exposure to both their parents. The quality of the parent-child relationship was determined to be better for joint custody. (The nop-child relationship is described as more like an aunt or uncle - child relationship.)

Professional Psychology, Berkeley, UMI No. 81-10142

USE Nunan compared 20 joint custody children (ages 7-11) with 20 age-matched children in sole maternal custody. All families were at least two years after separation or divorce. Joint custody children were found to have higher ego strengths, superego strengths and self-esteem than the single custody children. The joint custody children were also found to be less excitable and less impatient than their sole custody counterparts. For children under four at the time of separation the differences were very small.

3. B. Welsh-Osga. The effects of custody arrangements on children of divorce. Doctoral thesis 1981. University of South Dakota. UMI No. 82-6914.

Welsh-Osga compared children in intact families with joint custody and single custody families. Age range 4 1/2 to 10 years old. Children from joint custody were found to be more satisfied with the time spent with both parents. Parents in joint custody were found to be more involved with their children. (Joint custody parents found to be less overburdened by parenting responsibilities than sole custody parents.) Children from all four groups (intact families, sole maternal, sole paternal, joint custody) were found to be equally well adjusted by their various standardized measures.

4. D.B. Cowan. Mother Custody versus Joint Custody: Children`s parental Relationship and Adjustment. Doctoral Thesis 1982. University of Washington. UMI No. 82-18213.

1. USE Cowan compared 20 joint custody and 20 sole (maternal) custody families. Children in joint physical custody were rated as better adjusted by their mothers compared with children of sole custody mothers. The children`s perceptions in sole custody situations correlated with the amount of time spent with their father. The more time children from sole maternal custody spent with their fathers, the more accepting both parents were perceived to be, and the more well-adjusted were the children.

5. E.G. Pojman. Emotional Adjustment of Boys in Sole and Joint Custody compared with Adjustment of Boys in Happy and Unhappy Marriages. Doctoral thesis 1982. California Graduate Institute. UMI No. ?

Pojman compared children in the age range 5 to 13 years old. Boys in joint custody were significantly better adjusted than boys in sole maternal custody. Comparing boys in all groups, boys in joint custody compared very similarly to boys from happy families.

6. E.B. Karp. Children`s adjustment in joint and single custody: An Empirical Study. Doctoral thesis 1982. Californis school of professional psychology, Berkeley. UMI No. 83-6077

(Age range of children 5 to 12 years, studying early period of separation or divorce. Boys and girls in sole custody situation had more negative involvement with their parents than in joint custody situation. There was in increase reported in sibling rivalry reported for sole custody children when visiting their father (ncp). Girls in joint custody reported to have significantly higher self-esteem than girls in sole custody.)

7. J.A. Livingston. Children after Divorce: A Psychosocial analysis of the effects of custody on self esteem. Doctoral thesis 1983. State University of New York at Buffalo. UMI No. 83-26981.

(Children in joint custody situations were found to be better adjusted than children in sole custody situations.)

8. L.P. Noonan. Effects of long-tern conflict on personality functioning of children of divorce. Doctoral thesis 1984. The Wright Institute Graduate School of Psychology, Berkeley. UMI No. 84-17931.

(Long-term effects were studied in joint custody, sole maternal custody and intact families. Children in joint custody families were found to be more active than in sole custody families or intact families. In low conflict situations children did better (demonstrated less withdrawal) than in either sole custody or intact families.)

9. V. Shiller. Joint and Maternal Custody: The outcome for boys aged 6-11 and their parents. Doctoral thesis 1984. University of Delaware. UMI No. 85-11219.

(The thesis compares 20 boys in joint custody with 20 matched boys in sole maternal custody. A number of tests were used. Boys from a joint custody environment were found to be better adjusted than boys from a sole custody environment.)

10. M.R. Patrician. The effects of legal child-custody status on persuasion strategy choices and communication goals of fathers. Doctoral Thesis 1984. University of San Francisco. UMI No. 85-14995.

(90 fathers were questioned regarding how unequal recognition of parental rights might encourage conflict. Joint legal custody was found to encourage parental cooperation and dis-courage self-interest. Sole custody in both custodial AND non-custodial status encouraged punishment-oriented persuasion strategies. Unequal custody power was perceived as inhibiting parental cooperation by both parents.)

11. G.M. Bredefeld. Joint Custody and Remarriage: its effects on marital adjustment and children. Doctoral Thesis. California School of Professional Psychology, Fresno. UMI No. 85-10026

(Both sole and joint custody children adjusted well to the remarriage of their parent; no significant difference found between the groups. The parents of joint custody situations, however, expressed more satisfaction with their children and indicated that they appreciated the time alone with their new spouse. Sole custody children also reported seeing their father less often after remarriage of the mother; this did not happen in joint custody situations.)

12. B.H. Granite. An investigation of the relationships among self-concept, parental behaviors, and the adjustment of children in different living arrangements following a marital separation and/or divorce. Doctoral thesis 1985. Unviersity of Pennsylvania, Philadelphia. UMI No. 85-23424.

(Parents in sole custodial homes (both maternal and paternal) were perceived as using psychological pressure techniques to control children. e.g. inducing guilt. However, in joint custody homes, the perception of the children was that such techniques were seldom used. No difference in self-concept was detectable among the different homes. Children's ages 9-12 years. 15 joint, 15 maternal sole, 15 paternal sole.)

13. S. Handley. The experience of the child in sole and joint custody. Doctoral thesis 1985. California Graduate School of Marriage and Family Therapy.

(Joint custody children more satisfied than sole custody children.)

14. S.M.H.Hanson. Healthy single parent families. Family Relations v.35, p.125-132, 1985.

(21 joint custody and 21 sole custody families compared. Mothers in joint custody found in better mental health. Mothers with sole custody sons had the least amount of social support and mothers with joint custody of sons had the most. Joint custody mothers reported best child-parent problem solving of all.)

15. J. Pearson and N. Thoennes. The Judges Journal, Winter, 1986.

45c (Child support compared among sole custody and joint custody. Joint custody shown to produce much better compliance in child support payments to the mother.)

16. J.S. Wallerstein and R. McKinnon. Joint Custody and the Preschool Child. Behavioral Sciences and the Law, v.4, p.169-183, 1986.

This paper presents joint custody for young children in a negative light.

17. M.B. Isaacs, G.H. Leon and M. Kline. When is a parent out of the picture? Different custody, different perceptions. Family Process, v.26, p.101-110, 1987.

(This study compares children from five groups: joint physical custody, joint-legal maternal-physical, joint-legal paternal-physcial, sole maternal and sole paternal custody. On their measurement of how children perceive the importance of family members, sole custody children were three times mores likely to omit one parent than joint custody situations.)

18. F.S. Williams. Child Custody and Parental Cooperation. American Bar Assn, Family Law, August 1987.

(Williams studied high-conflict, high-risk situations. He found that children in sole custody (typically but not exclusively maternal) much more likely to be subject to parental kidnapping and/or physical harm. He found that high-conflict families do better and are more likely to learn cooperative behavior when given highly detailed orders from the judge.)

19. E.E. Maccoby, R.H. Mnookin and C.E. Depner. Post-divorce families: Custodial arrangements compared. American Association of Science, Philadelphia. May 1986.

USE 2. (Mothers with joint custody were found to be more satisfied, when compared with mothers in sole custody situation.)

20. V. Shiller. Joint versus maternal families with latency age boys: Parent characteristics and child adjustment. American Journal of Orthopsychiatry, v. 56, p. 486-9, 1986.

(Interviews with boys as well as with both parents. Age group 6-11. Found boys from joint custody families better adjusted than comparison group of boys from sole maternal custody families.)

21. J.B. Kelly. Longer term adjustment in children of divorce: Converging Findings and Implications for Practice. Journal of Family Psychology, v.2, p.112-140, 1988.

22. Zaslow M. Sex Differences in children's response to parental divorce. Paper 1. Research methodology and postdivorce family forms. American J. of Orthopsychiatry. 58:355, 1988.

23. Zaslow M. Samples, Variables, Ages and Sources. Am. J. Orthopsychiatry 59:118, 1989.

24. J.S. Wallerstein and S. Blakeslee. Second chances: Men, women and children after divorce. New York, Ticknor and Fields. 1989

25. M. Kline, J.M. Tschann, J.R. Johnson and J.S. Wallerstein. Children's adjustment in joint and sole custody families. Developmental Psychology, v. 25, p. 430-435, 1989.

This work finds that in non-conflicted joint and sole custody families there is little measurable difference between a child's behavior in sole or joint custody.

26. L.M.C. Bisnaire, P.Firestone and D. Rynard. Factors associated with academic achievement in children following parent separation. American J. of Orthopsychiatry. v.60(1), p.67-76, 1990

Visitation found to be a most significant factor in enabling children to maintain pre-divorce academic standards.

27. J. Pearson and N. Thoennes. Custody after divorce: Demographic and attitudinal patterns. American Journal of Orthopsychiatry, v.60(2), p. 233-249, 1990.

(Regular visitation shown to be significant in a number of factors explaining postive adjustment patterns.)

28. D. Popenoe, Associate Dean for Social and Behavioral Sciences of Rutgers University, co-chairman of the Council on Families in America. "The Controversial Truth: Two-parent Families are Better." Published in Speak out for Children, v.8 Winter 1992-3.

Address for obtaining theses: University Microfilms International, 300 North Zeeb Rd, Ann Arbor, MI 48106. 1 (800) 521-3042.

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Wisconsin SB 202 and AB442

Statistics supporting the Equal Shared Parenting Bill page

These are problems our children suffer from lack of two parent households:

PSYCHOLOGICAL HEALTH PROBLEMS

1. GREAT PSYCHOLOGICAL PROBLEMS
   A. single parent children 3 to 4 times more likely to have emotional or behavioral problems

      (Zill and Schoenborn, National Center for Health Statistics, 1990)

   B. 84% of teens hospitalized for psychiatric care come from single parent homes (1989 study, cited by Hewlett, When the Bough Breaks)
2. HIGHER SUICIDE RATE
   A. teens who attempt suicide similar to non-suicidal teens in age, income, race or religion, are more likely to have little or minimal contact with their father (Study of 752 families by New York Psychiatric Institute, cited by Hewlett)
   B. 75% of teens who commit suicide are from single parent homes (Elshtain, The Christian Century, 1993)
3. MORE ALCOHOL AND DRUG ABUSE
   A. 18% of children with strict and involved fathers used drugs
   B. 35% of children without fathers used drugs (1988 UCLA study, cited by Hewlett)
   C. Children in father-absent homes are 4.3 times more likely to smoke as children in father-present (Stanton, Oci, and Silva, 1994 survey of 1037 15-year-olds)
4. GREAT FREQUENCY OF SLEEP DISORDERS
   A. more trouble falling asleep, more nightmares, and night terrors (Psychiatrist Alfred Messer, cited by Hewlett)
5. PERSISTENT FEELINGS OF BETRAYAL, REJECTION, RAGE, GUILT, PAIN

B. Two-thirds [of father-absent children] yearned for the absent parent, one-half of those with an intensity we found profoundly moving. (Wallerstein and Kelly, 1980, Surviving the Breakup)

6. LOWER SELF-ESTEEM
   A. especially true for girls (Dr. Robert Fay presentation at NCMC conference, 1992) (Davidson, Life Without Father: America's Greatest Social Catastrophe, Policy Review, 1990)

COGNITIVE/ACADEMIC ABILITY

1. LOWER ACADEMIC ACHIEVEMENT
   A. 38% of elementary students from single parent homes were low achieving, while 23 % of both parent children were low achieving (Nat'l Assoc. of Elementary School Principals report, city by Hewlett)
   B. 30% of children from father-present homes were high achieving, while only 17% of children from father-absent homes were high achieving.
2. LOWER MATH SCORES
   A. (Yale University study by Carlsmith, cited by Hewlett) (Cortes and Fleming, 1968)
3. GREATER FAILURE RATE
   A. elementary students from fatherless homes or homes with mother and a stepfather have to repeat
   B. (National Center for Health Statistics study of 47,000 households by Deborah grades at a rate 2-3 times higher than children with both biological parents Dawson,1991)
4. LOWER SAT SCORES
   A. "dramatic" lower scores for students from father-absent homes (Columbia University and Bowling Green State University study of 295 from father-absent homes and 760 from father-present homes, cited by Hewlett)
5. LOWER IQ AND ACHIEVEMENT
   A. children who lost fathers before age 5 scored lower on Otis Quick Test and Stanford Achievement Test as junior-high and high-school students (Santrock, 1972) (Hetherington, Cox, and Cox study, 1978) (Cortes and Fleming, 1968)
6. MORE LIKELY TO DROP OUT OF SCHOOL
   A. children from fatherless homes twice as likely to drop out of school (US Department of Health and Human Services, Survey on Child Health, 1993)
7. LESS LIKELY TO ATTEND COLLEGE
   A. (Wallerstein, Family Law Quarterly, 1986)

ANTISOCIAL BEHAVIOR

1. HIGHER RATES OF CRIMINAL BEHAVIOR
   A. fatherless children are twice as likely to become criminally involved (Margaret Wynn, 1964) -72% of adolescent murderers, 60% of rapists, and 70% of long-term prisoners grew up in father-absent homes (US Department of Justice data, 1991)
2. GREATER DELINQUENCY FOR BOYS
   A. 87% of Wisconsin juvenile delinquents are a product of father-absent homes (Wisconsin Department of Health and Social Services, 1994)
   B. 70% of juveniles in state reform institutions grew up in father-absent homes (US Department of Justice data, 1988)
   C. young black men raised without a father are twice as likely to engage in criminal activities (Hill and O'Neill, 1993) (Matlock in Adolescence) (Siegman, 1966; Anderson, 1968; Kelly and Baer, 1969)
3. GREATER DELINQUENCY FOR GIRLS
   A. (Monahan, 1957; Toby, 1957)
4. MORE VIOLENT MISBEHAVIOR IN SCHOOL
   A. Children who exhibited violent misbehavior in school were 11 times as likely to live without their father than children who did not violently misbehave (Sheline, Skipper, Broadhead, Aamerican Journal of Public Health, 1994)

CHILD ABUSE

1. GREATER CHANCE OF BEING PHYSICALLY ABUSED
   A. preschoolers living without their biological father were 40 times more likely to be a victim of child abuse as compared to like-aged children living with their father (Wilson and Daly in Child Abuse and Neglect: Biosocial Dimensions, 1987)
   B. premarital pregnancy, out-of-wedlock childbearing, and absent fathers are the most common predictors of child abuse (Smith, Hanson, and Noble, Child Abuse: Commission and Omission, 1980)
2. GREATER CHANCE OF BEING SEXUALLY ABUSED
   A. 69% of victims of child sexual abuse came from homes where the biological father was absent (Gomes-Schwartz, Horowitz, and Cardarelli, Child Sexual Abuse Victims and their Treatment, 1988)

HETEROSEXUAL ADJUSTMENT FOR DAUGHTERS

1. MORE DIFFICULTY IN INTERACTING WITH MEN AND MALE PEERS
   A. daughters of divorcees aggressive, forward with boys and men
   B. daughters of widows shy and timid with boys and men (Hetherington, 1972)
2. YOUNGER MARRIAGES
   A. daughter of divorcees marry at younger age (Hetherington, 1972)
3. MORE UNWED PREGNANCY
   A. girls from fatherless homes 111% (over 2X) more likely to have unwed pregnancy (Warren Farrell presentation at NCMC conference, 1992; Hetherington, 1972)
4. HIGHER DIVORCE RATES
   A. girls from fatherless home 92% (nearly 2X) more likely to divorce (Warren Farrell presentation at NCMC conference, 1992; Hetherington, 1972)

HETEROSEXUAL ADJUSTMENT FOR SONS

1. LESS MASCULINE, MORE DEPENDENT BEHAVIOR
   A. (Santrock's study of 4- and 5-year old, father-absent boys) (Rogers and Long's study of 6- too 15-year-old boys where father employed away from home community, 1968) (Hetherington's study of 9- to 12-year-old, father-absent boys, 1966)

GENERAL HEALTH

1. MORE LIKELY TO SUFFER ACCIDENTS AND INJURIES
   A. fatherless children 20-30% more likely to experience accidents, injuries, and poisonings that did father-present children (Remez, Family Planning Perspectives, 1992)
   B. compared to children living with father, fatherless children experience more accidental injury, asthma, frequent headaches, and speech defects (Dawson, Journal of Marriage and Family, 1991)

Questions and Answers about Equal Shared Parenting / Kids Need Both Parents

Q. What is Equal Shared Parenting / Kids Need Both Parents?

A: Equal Shared Parenting / Kids Need Both Parents is proposed legislation in Wisconsin, Senate Bill 202 and Assembly Bill 442. This bill ensures that children have the right to equal access to both parents in cases of custody and divorce. Wisconsin believes that parents have a right and responsibility to parent their child. Of course, parents who are convicted of child abuse in the Children's Code 48 would not be even considered for Equal Shared Parenting (ESP).

Q: What about high conflict situations?

A: Equal Shared Parenting is even more important in these types of situations. Under current law, Family Court is a tug of war, making one parent the winner and the other parent the loser. The children are the trophies. With ESP, parents start out on equal ground with each parent having a part in the child's life. Studies show that conflict goes down after parents realize that ESP is the way it is. In these emotional times, parents need counseling in mediation and dispute resolution, not adversary resolution. The current system is wrong to pit one parent against the other

Q: How do you get parents to make equal shared parenting work?

A: Since divorce is such an emotional time, the emphasis must be put on what's right for the the children and not on the feelings towards the other parent. The easiest way to get parents to work together is to take the incentive to fight away. The incentive is the control and to prove that they are the "better" parent. By starting out on equal footing, parents will not be forced into the cruel war of "Divorce, Wisconsin Style". Before Wisconsin had 50/50 marital property law - 80% of divorced couples went to court to fight over property. Now, for all practical purposes, no cases go to court. Same way for children. If you know that you will be allowed your equal share of parenting time with the children, litigation will be cut way down. Once the parents each understand that they

I will work out a plan that will be presented to a judge, it will be done. They both love their children and want what is best for the

A questionnaire was written for parents to help work out parenting times. Fill out the questionnaire, talk to a mediator , work out your differences and go on with your life. The money that was saved from huge lawyer fees can be put towards the childs education. Parents working together for the children may actually bring the divorce rate down.

Q: How would Equal Shared Parenting change the children's daily life?

A: Children of divorce learn responsibility just like intact families. Children learn to take band instruments, orthodontic appliances, and homework back and fourth. Children prefer that both parents are involved in their lives. Children who see differences in parenting between the mother and the father, are getting a small preview of real life.

Q: How would this work with children under 2 years old?

A: Young children need much contact with both parents to form a bond.

Q: What about people who are child abusers and beat their spouse?

A: While it is true that some people do abuse their children, no one wants children to go to abusive parents. Parents who are convicted of child abuse in the Wisconsin Children's Code 48 would not be even considered for Equal Shared Parenting. This bill will also discourage parents from falsely accusing the other parent of abuse. The Wisconsin Department of Health and Social Services in their Child Abuse and Neglect Report to Governor Tommy Thompson and the Legislatures is concerned about the 'disturbing number of fabricated reports initiated by adults in conjunction with divorce custody disputes.' This is causing much extra work for our social workers. The DHSS states 'These (fabricated reports) are definitely a misuse of the CPS (Child Protection Services) system and an additional burden to CPS workers trying to manage large caseloads.' So, ESP will free up DHSS to do the job that they were hired to do.

Q: What about the parents who just cannot have equal time.

A: The best way to give both parents a chance and to give children a chance to continue their relationship with both parents is to have the law provide for the presumption of equal shared parenting to those who are willing and fit. If the parents choose to have unequal time, let it be their choice. Currently unequal time is decided by prejudice, discrimination, special interests, corruption, and power plays.

Q: Why isn't child support covered in ESP?

A: Parenting time is a separate issue from child support. Wisconsin has many laws covering child support, there are no laws covering emotional support, the lack of parenting time and for with holding children from the other parent.

Q: What about parents who want to move?

A: Parents who wish to move must stay within a 150 mile radius. While this is an arbitrary number, the moving parent must relinquish rights when moving out of state.

Cover	Questions & Answers	Summary of Bills	Statistics	How Parents Can Make Bill Work	Divorce as a Cash Crop	FAQ	Current Law
1	2	3	4	5	6	7	8

A Summary of Equal Shared Parents / Kids Need Both Parents

Wisconsin SB 202 and AB442

Click here for a copy of the actual bill

Providing children with two parents and parents with equal opportunity to parent

INTENT OF PROPOSAL:

- ☐ To give Wisconsin children the opportunity to have both parents' full involvement, parental love, guidance, protection, and nurturance, regardless of the marital status of their parents
- ☐ To ensure that Wisconsin parents are no longer denied their fundamental right to a full and equal role in the rearing of their children
- ☐ To let fit parents decide what is best for their children rather than outsiders
- ☐ To stop the adversarial, lawyer-dominated nature of child custody decisions and replace it with cooperative, parent-made decisions
- ☐ To minimize the taxpayers' and family's divorce expenses (Note 1)
- ☐ To curb domestic violence and child abuse (Note 2)
- ☐ Reduce juvenile delinquency and improve educational success (Note 3)

KEY PROVISIONS:

- ☐ Lets parents of non-intact families arrange a time-sharing schedule that best works for their family
- ☐ Restricts the ability of one parent to terminate or minimize the other parent's relationship with the child
- ☐ Provides for joint legal custody, unless a parent is unwilling or unfit
- ☐ Bars a parent from unilaterally moving the child away from another loving parent, his/her school, and familiar community
- ☐ Requires separated parents to assume the same responsibilities as parents in traditional families

BENEFITS:

- ☐ Reduces, not increases, domestic abuse and child abuse (Note 2)
- ☐ Spares our children the greatest trauma children can suffer, the loss of a parent
- ☐ Reduces unpaid child support (Note 4)
- ☐ Lowers juvenile delinquency, crime, unwed pregnancy rates , and high school drop-out rates (Note 3)
- ☐ Reduces the annual $250 million expenditures on divorce litigation in Wisconsin (Note 1)
- ☐ No research or expert has ever demonstrated that children are better off raised with one parent rather than two, barring parental unfitness (Note 5)

LETTING CHILDREN HAVE TWO PARENTS

usc

Note 1: According to research by LKD, expenditures by Wisconsin citizens on divorce totals $200 million per year. Statewide taxpayer expenditures on divorce related items such as courts, county family court counseling, child support enforcement totals approximately $50 million per year. Equal shared parenting, by minimizing child custody disputes, would dramatically lower both public and private expenditures on divorce.

usc

Note 2: A parent straddled with full responsibility for rearing his/her child experiences greater stress and frustration. He/she is more likely to "lose it" and strike out against the child. Single parents have higher child abuse rates than couples who share child rearing responsibilities. Also a person cut off from his/her child and limited to a visitor role is frequently angry at the other parent and more prone to be abusive towards their ex-spouse. According to a research project conducted by an Arizona court service when two highly-conflictual parents were forced to share the child, parental conflict decreased. (Family and Conciliation Courts Review, Vol. 33 No. 4, October 1995 495-505) Equal Shared Parenting will allow child rearing responsibilities to be shared and virtually eliminate the unwanted child loss that angers many loving parents.

Note 3: 87% of Wisconsin juvenile delinquents are from father-absent homes. (Wisc. Dept. of Health and Social Services, 1994) Fatherlessness is the single best predictor whether or not a child will turn to crime as an adult. 72% of adolescent murderers, 60% of rapists, and 70% of long-term prisoners grew up in father-absent homes. When fathers share in rearing their children, antisocial behavior is minimized. Elementary school children reared without fathers have to repeat grades at rate two times higher than children reared by both biological parents. (National Center for Health Statistics, Deborah Dawson, 1991) Fatherless children are twice as likely to drop out of school. (U.S. Dept. of Health and Human Services, Survey on Child Health, 1993)

Note 4: According to US Bureau of Census, 90% of parents with equal shared time with their child pay their full child support, while only 79% of parents with just placement rights pay their full child support and only 44.5% of parents without placement rights pay their full child support. Involved parents financially support their child.

Note 5: Paraphrasing an observation reported in "Understanding and Collaboratively Treating Parental Alienation Syndrome" by Kenneth Waldron, Ph.D. and David E. Joanis, J.D. of Madison, Wisconsin in American Journal of Family Law, Vol. 10, 121-133 (1996)

Equal Shared Parenting is supported and promoted by following Wisconsin grassroots organizations:

- ☐ Citizens for Law Reform
- ☐ Domestic Abuse Project
- ☐ Family Action Association
- ☐ Legislation for Kids and Dads
- ☐ Madison Men's Organization
- ☐ Mothers without Custody
- ☐ Parents' Rights Coalition
- ☐ Wisconsin Fathers for Equal Justice
- ☐ Wisconsin Children's' Advocates
- ☐ Wisconsin Organization of Fathers for Equal Rights

For further information on this proposal, contact Clair Wiederholt, Director of Legislation for Kids and Dads at telephone number (608) 246-6708 or email cwieder@iris.com

Divorce as a cash crop!

page

Who wins in divorce? The people who make the most money! Divorce is a cash crop! The winners are the ones earning a living from divorce ... such as lawyers (three minimum per custody- his, hers, and the kids. guardian et litum), judges, and psychologists. The losers are the parents who spend a child's education on custody proceedings. The losers are the children. These are the children which statistics prove they are ones more likely to end up pregnant, on welfare, on drugs, in jail, etc. Who pays for these services? You do. You are another loser. You are the one who pays the taxes to build the jails, furnish the courtrooms, and counsel the troubled teens.

Divorcing people are charged on average $15,000 each to be represented. Current law has some lawyers turning custody into a "win-lose" game for their client. One parent "wins" by becoming the custodial parent and making all the decisions. The other parent "looses". The other parent is reduced to an occasional weekend visitor, with no say as to how the child is raised. No wonder parents are not getting along and false accusations of abuse are on the rise. The current justice system and lawyers promote fighting. Before Wisconsin was a 50/50 property state, 80% of divorcing couples hired lawyers and went to court over property/asset issues. Now, less than 2% of cases go to court. This is the same principal of Equal Shared Parenting/Kids Need both Parents. Starting out on equal footing, takes the incentive to fight away.

Divorce costs:

18,000 Wisconsinites divorce every year with 10,000 lawyers "willing to do the battle". Add to this the psychologists, private detectives, retirement plan and property appraisers, Guardians ad Litum, and the court filing fees they pay. This is a $200 million dollars per year industry. What would happen if a cap of $3,000 were put on divorce fees?

Wisconsin taxpayers spend $117,000 annually in salary and benefits each circuit court judge. $49 million financing the family courts, commissioners, counseling services, and the child support enforcement agency.

According to research by Legislation for Kids and Dads (LKD), the cost of divorce to Wisconsin taxpayers and the divorcing couple is a shocking quarter of a billion dollars annually. No one has calculated the long-term costs to individuals and society because of the social ills related to custody.

This includes

1. Equal Parents' Rights and Responsibilities Bill
2. Father's Fair Notification Bill
3. A-Father-For-Every-Child Bill

Equal Parents' Rights and Responsibilities Bill

(Also called the Shared Parenting Bill) LRB 1834

AN ACT to amend Section 767.23, Section 767.24, Section 767.327, and Section 767.51 which allow a court to award sole or joint custody, to determine the periods of physical placement following divorce and judgment of paternity, and to allow a parent to move the child within or outside the state.

Preamble

A parent's right to fully participate in the caring and rearing of his or her child is a constitutionally-protected, fundamental right, one affirmed by U.S. Supreme Court decisions of Wisconsin v. Yoder, Zablocki v. Redhail, and Stanley v. Illinois (in the case of paternity). In May v. Anderson, the Supreme Court declared a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. Emphasizing the primacy of rights and responsibilities of the parents with respect to their own child, the U.S. Supreme Court in Prince v. Massachusetts resolved, "It is cardinal with us that the custody, care, and nurture of children reside first with parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

This protection of the Constitution has been extended to post-divorce families. In Franz v. U.S. the federal court concluded "...a [once] married father who is separated or divorced from the mother and is no longer living with his child could not constitutionally be treated differently from a currently married father living with his child."

The proposed Equal Parents' Rights and Responsibilities Bill would ensure that Wisconsin fathers and mothers are no longer denied their fundamental right to a full and equal role in the caring and rearing of their child. Rather it is the goal of this bill to better secure for non-intact families the same rights and protection now afforded to intact families.

Saliently, the proposed bill would provide the child the opportunity to both parents' full involvement and parental love, guidance,

protection, and nurturance, regardless of the marital status of the parents.

Summary of the Proposed Bill

Joint legal custody and equal time with the child shall be presumed in divorce and paternity cases unless one of the following has been substantiated by clear and convincing evidence:

1. parent has abused the child
2. parent has significant alcohol or drug problem that endangers the child
3. parent has a mental or physical problem rendering him or her unable to properly care for the child
4. parent is likely to unreasonably interfere with child's relationship with the other parent.

Parents may arrange any schedule of equal periods of physical placement they agree to and may deviate from joint legal custody and equal time if they agree to.

Neither parent may at any time move the child out of his or her school district unless both parents agree or a court determines the need for such a move is compelling and establishes a placement schedule which as closely as possible accomplishes an equal placement arrangement.

This bill, when enacted, would apply retroactively to all already-judicated cases as well new ones during their pendency until final disposition.

"Best interest of the child" is defined as the conditions under which (a) the child has the maximum amount of time and involvement with both his or her parents, unless a parent is unfit, (b) any conflict between the child's parents is minimized, (c) neither parent is using the child as a conduit or means for retaliation or revenge against the other parent, (d) any negative impact of this action may have on the child is minimized

1995-96 Legislative Proposal

Father's Fair Notification Bill

Preamble

3-24

Hi. My name is Wanda Driscoll. I am from Wichita. I am not a public speaker. In fact, if anyone had tried to tell me not so long ago that I'd be up here speaking before you, I'd have never believed them. But this bill has caused me to look past my own shyness to seeing the hope for change; that I can make ever so slight a difference in a world that desperately needs it.

This bill is about children being able to share equally of their parent's time.

Children love and need both their parents. The State of Kansas is doing children an injustice by not backing their needs for the opportunity of equal time with both parents.

Statistics from children of broken homes are well-publicized. Teen pregnancy, drug abuse, criminal problems, school drop-out rates are much higher in children who have come from broken homes. Children from homes in which 90 +% are being raised by one parent with primary residential custody, in which there is usually the absence or severely limited access of the other parent. Burdening one parent with full custody leads to undue stress on that parent to provide the emotional needs for the children. This is a huge burden for parents, which ends simply with the child's needs not being met. This leads to emotional problems either then, down the road, or both. In looking at the situation as a whole, it should be clear that we must do our utmost to promote the maximum amount of time possible with both parents. Establishing as much as possible, equal parenting time, where our focus is truly in the best interests of the children, should be our number one priority in laying the groundwork for a stable society of the future.

One man recently told me of his almost 17 year old daughter who is now experiencing drug abuse problems, was sexually active at age 13; a once A,B student who is now a high-school dropout. She had just confessed to him that after he and her mother had split up, she would lie crying in her bed at night. Her big brother would hear her, go to her and try to comfort her. She would tell him how she missed the bedtime stories her father always told her when he tucked her in at night. These kinds of stories are not the exception, but the rule. Thousands upon thousands of vindictive parents are quite willing to use their children as pawns in a sick game of breaking their ex-spouse financially and emotionally. Never mind what the children are going through. Dozens of states across the country are helping them in this endeavor. The State of Kansas can begin to turn this around by supporting Senate Bill 629, a bill which clearly carries the philosophy of dual parent involvement, which supports and encourages the possibility of equal parenting time.

Senate Judiciary
3/12/98
att 4

Thousands of children are being forced into situations every day in which they have no desire to placed in. Thru no fault of their own, they are being put into a position of being denied access to someone whom in most cases they have developed a deep parental bond. No longer will that parent be able to do those little everyday routines with them that have become imbedded in that child's brain as tradition. The loving parent who has always tucked them in at night and read them a bedtime story; the father who let them 'hang out' with him and helped him work on his car in the garage; the mother who was helping them learn gardening, is now suddenly reduced to 'visiting' with them 'every other weekend and one evening a week'

This bill has the potential to change all of this. It gives the parents the knowledge that equal or near equal parenting time in the support of dual parental involvement is a feasible option; plus it directs them to prioritize their efforts in raising their children as a joint effort. Let us not also forget one other very important thing it does…..it gives children back their parents.

I pray that what my children, and thousands of other children across Kansas have gone through will not be in vain. Please stop sacrificing children's needs across Kansas. Support Senate Bill 629.

Our children will thank you.

T ENATE JUDICIARY COMMITTEE

S Jud 3-12-98 Att #5

FROM PHILLIP W. ALQUIST
3336 S.W. PLASS AVE.
TOPEKA, KS. 66611

SENATE BILL 629 (IN FAVOR)

It's time that people wake up and see that children need both parents in their lives as much as possible. We have tried the failed policy of Linda Elrod of income over relationship since 1984 and where has it got us? It got us more jails and youth centers. How many years do you need to see, youth drug abuse, unwed pregnancy, gangs and bigger and bigger youth centers have one thing in common and that is lack of one parent mainly the male in their lives.

Linda Elrod says she's a Child Advocate. All I can say to that is, to be a Professor of Law and not know what a Child Advocate is, you know why our youth are so mess up. A Child Advocate is a person who pleas on behalf of or use persuasion in support of children. Our children are screaming for both parents to be there for them.

Linda Elrod said that bills like this might lead to more child abuse by letting the other parent have more time with their children but the Children and Youth mini summit held in Topeka acknowledged that parenting as the No.1 issue affecting Topeka children. They went on to say that children that grow up with confident, capable parents are more likely to experience success at school and , later, at work. Less likely to do drugs have teen pregnancy, involved in crime and so on. And Linda Elrod a Professor of Law is against this bill?

The bottom line is Linda Elrod and her group if one parent (the father) has more time with his children then child support payments might be lower for the other parent (the Mother) and Linda Elrod rather have more foster care, counseling, juvenile offenders than lower child support payments!

Thank you for your time on the very important first step in helping our children.

Phillip W. Alquist
(victim of Linda Elrod policy)
Father of three

Senate Judiciary 3-12-98 Att 5

SJ 3-12-98 att 6

Tom Nelson
3828 Stetson Dr.
Lawrence, Kansas 66049

Re: Senate Bill Number 629

Hello,

I would like to share with you my input regarding Senate Bill 629. I feel that children should be with both parents equally. Children were meant to have both parents. Therefore, I feel that this Bill should have provisions allowing for either parent to request 50-50 joint residential custody without a lengthy, drawn out court battle. I also feel that other mutually agreed arrangements should be allowed to be made without getting into litigation. However, the basic right of each parent to be equally present in the child's life should be supported.

I believe that the parent with the least amount of parenting time should be able to ask for more parenting time, up to and including 50/50, without the need for an expensive and destructive court hearing. The request for more time needs to be submitted to a judge for recording. A schedule for a period of 2 years needs to be attached to the request. The request may be challenged only after 8-10 hours of mediation has been attended.

BENEFITS OF SUCH LEGISLATION:

1) Eliminates court fights which damages cooperation between the parents on parenting issues.

2) Minimizes the damage transferred to the children caused by economic and emotional stresses of a long drawn out custody battle.

3) Reduces the burden on each parent of having the sole responsibility of child raising. Allows each parent to have time for personal growth and renewal. Children benefit from having parents who are fulfilled and not burnt out from trying to assume the impossible task of both parenting roles.

4) This would greatly lower the court load if these custody guidelines were in place. The courts would have more time to spend on cases involving unusual circumstances.

I think that it is very important that both parents are given an equal opportunity to parent the children that they have brought into this world. This is a win-win situation for the children.

Thank you for your consideration.

Respectfully Submitted,

o Thomas L.E. Nelson

Senate Judiciary
3-12-98
att 6

SJud 3-12-98 Att #7

Testimony to the Kansas Senate Committee on Judiciary Regarding SB 629
by Mark Shepherd, Valley Center, Kansas March 12, 1998

I am in support of SB 629, as it explicitly opens up the diversity of parenting options available to Kansas parents and their children, that is currently discouraged throughout Kansas. Protections remain in this bill for the fringe cases, but it will put a check in place against arbitrary and capricious rulings that may occur in domestic court regarding custody. Parents share legal and physical custody while together, unless supported by specific factual reasons proven not to be in the child's best interests, they should retain the opportunity of doing so outside the intact family.

SIGNIFICANT HIGHLIGHTS OF THIS BILL

Preamble: Clearly states a philosophy of maximizing dual parent involvement, guiding all parties in understanding Kansas' interests in post-divorce parenting.

New Section 1: This section reinforces the expectation of parental cooperation with some teeth. Choosing not to cooperate should have consequences that a District Judge would have to consider.

Section 7: Provides punitive measures for intentionally making false abuse of child allegations. This type of false allegation is devastating to the falsely accused parent and their relationship with the children. This must be dealt with severely. A legitimate concern may be raised as to whether this will discourage parents who sincerely believe there is abuse from saying so due to the potential penalty. This is adequately protected in the same section, letter (a) where "knowing" and "intent" to falsely accuse is specifically stated as the definition of the crime.

Section 14: (f) (9) should be amended to read, "The value and services contributed by both parents." This would be consistent with the intent of dual parent involvement.

Section 27: The amendment submitted by Jim Johnston in his written testimony should be incorporated into this bill. Otherwise, I feel it may be too difficult to pass this bill in the Senate and/or the House. It still allows for Judicial discretion, but requires judicial accountability in detailing specific "findings of facts" that would support an order other than equal or near equal parenting time. Additionally, both parents would be required to make a good faith attempt at developing a parenting plan, and if unable to agree, the judge would do so with the requirement to maximize each parent's time with their children most appropriate to the circumstances.

Senate Judiciary
3-12-98
att 7

CLAUDE (BUCK) REIDENBACH
President, Topeka Chapter
National Congress for Fathers and Children
216 West Lincoln
Burlingame, KS 66413

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TESTIMONY IN FAVOR OF SB 629

Dear Committee Members:

I must begin by complimenting you as lawmakers. Kansas have been far ahead of most of the other states all along. I did not realize it until I read the Kansas statutes in this bill, along with the proposed changes in italics. It has been the intention of the legislature to have both parents involved with their children all along. KSA 23-701 addresses the issue of enhancing the enforcement of parenting time. This statute even allows for made-up parenting time. It has been the intention of the legislature and senate to prosecute those responsible for false allegations and to prosecute those responsible for the interference of custodial rights. I humbly ask your forgiveness for accusing you and other lawmakers, past and present, of not being considerate of fatherhood. Going over the existing statutes, criminal and civil, as it pertains to this bill, it is very apparent that nearly all of the concerns we fathers have had in the past have already been addressed by past legislation. It is in there! There is only one problem, however. It has been the Judiciary and the law enforcement community that has dropped the ball so miserably, by selectively not enforcing these statutes. Why make a law that we don't intend to enforce? Well, it has happened. It has effectively relegated us fathers to a ***good for nothing but a paycheck, otherwise, insignificant status.***

We need your help to hopefully solve the problems we fathers are having with the indifference we are confronted with by the judiciary and the law enforcement community in Kansas. We have to fight an uphill battle just to be able to provide emotional support for our children. When we ask the judiciary for help to enforce existing orders, we are treated like we should remove ourselves from the picture, only to show up when the child support is due. Parenting time is being denied us, often in violation of criminal and civil statutes. Yet, the laws are not enforced most of the time. But just let a father keep calling the mother to try and see his kid, or go over to try and exercise his parental rights to be with his child, or he gives up and stops paying support because he can't see his child. The law enforcement community and the judiciary vehemently and zealously pursue him, persecute him and prosecute him. He can get arrested and charged in a New York second for phone harassment or trespassing even though he is being tormented to death by a vindictive, hateful woman. He will be at fault. She will be the abused, innocent person.

Senate Bill 140, passed last year, allows men to be pursued based on a whim, an allegation, where he must prove he is not what he is accused of. He could be one of twenty men served the same letter for the same reason. The woman can lie about her fertility, get pregnant, then abort or sue for support. The man is presumed the villain at all times. The bill is so gender-specific in nature that it violates the 1st, 4th, 5th, 8th, 9th, 13th, and 14th amendment rights of men, but it is enforced none the less. Yet, laws already on the books, gender neutral laws, addressing interference with custody and

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parenting time and false allegations of abuse, are ***selectively not enforced***. Why? Because most of the perpetrators who are violating the laws are mothers. They are the residential or custodial parents 80% of the time, and half of them believe that the father have no purpose in the child's life, so they are the primary perpetrators. Fathers are responsible for paying child support nearly 80% of the time. Child support is enforced very strictly, to the extent that father's faces are plastered all over the United States on posters, he can be arrested, he can have his property, credentials and driver's license confiscated. I submit to you that gender specific intentions are the primary mitigating factors that determine whether certain statutes are enforced or not. I am totally convinced of this.

Don't let the NOW supporters tell you that the only reason I want to see my child is because I want to continue to abuse the mother, or the child. That the only reason I want to have my share of parenting time is so I can alienate my child from the mother, or shirk my child support obligations somehow. Frankly, it is the mother who is doing the abusing. It is her who is abusing the child by keeping my child from me. It is she who is violating court orders and criminal law. It is she who should-be held accountable, yet it is I who is tormented to the point of near desperation, and often times, suicide. In the best interest of the child? Think about it.

The only real changes addressed in this bill, not otherwise considered by past legislation: a) the initial **mind set** and philosophy of this bill, as proclaimed by the wording on the first page and the ***New Section 1*** on the second page, b) the use of the term, ***parenting time***, instead of ***visitation***, c) the presumption of physical joint shared custody (as the statute reads now is very similar, as it provides for joint or shared custody), and d) alternate daycare.

This bill narrows the ambiguity that has, in the past, allowed judges to abuse their discretionary powers. There is more specific terminology dealing with the issues of enforcement of parenting time, the interference of custodial rights and parenting time, and false allegations of abuse, but at the same time, providing the protection aspect, pending criminal charges. There is a provision to give grandparents more consideration in custody matters.

Who in their right mind would not favor the term, ***parenting time***? It is so proper, and even politically correct. I have heard of mediators and social workers voicing concerns about the degrading term, ***visitation***. They consider the time spent with kids by their parents as just that, ***parenting time***.

This bill is about my need to be considered an equal partner in my child's life. It says that I must respect the other parent's status as an equal partner, also. It is about the respect parents deserve. I refuse to lie down and take it any more. I am hereby proclaiming my constitutional right to be a parent.

Thank you

Buck Reidenbach

OVERVIEW

Public perception of attorneys and the justice system is at its nadir. With an ever-rising divorce rate, exposure to domestic litigation is the most likely contact the average citizen will have with the justice system. Unfortunately, Family Court does much to promote the pervasive negative perception of attorneys and the courts. To divorce, particularly when there is a custody dispute, is confusing, traumatic, expensive and time consuming. The more lengthy the litigation, the more expensive and traumatic the proceedings become. As the parties mortgage their future, and that of their children, to the legal process, they blame family law attorneys and the Family Court. California's Family Court 2000 proposals should contain ways to reduce the time and expense required to resolve divorces, particularly those involving custody disputes which are at the heart of the most time-consuming and devastating domestic cases and those which have led to the most severe criticism of the process. A primary goal should be to resolve these cases more swiftly and surely in a way that encourages parents to behave positively in the best interests of the children. The result would benefit not only the specific children of divorce but, society as well. Generally children with positive and existing relationships with two parents will require fewer social, law enforcement and judicial services in the future.

FAMILY LAWS AND FAMILY COURTS SHOULD NOT MERELY REFLECT SOCIETY'S PROBLEMS BUT ATTEMPT TO CURE THEM

Current law advises the court that in making custody orders it should not consider gender and should favor the parent more likely to allow the child frequent and continuing contact with the other parent. Still, I have never seen the court make, or change, a custody ruling on that basis. I have seen many, many cases where a parent has thwarted visitation for years and the court has still refused to enforce visitation and/or a change of custody. This makes a mockery of the law. Custody disputes currently take too long and require too many resources (attorneys, therapists, court time, etc.) to resolve. The combination of delay and the courts' inability or reluctance to enforce current law favoring the parent who will promote the child's relationship with the other parent actually encourages continued bad behavior, if not actual parental alienation.

If there is a toxic custody dispute, one parent is almost always given physical custody with restricted visitation to the other. Awarding of primary physical custody to one parent has been defended by some findings on the effects of toxic custody disputes on children and the benefits of less frequent exchanges. The sample of custody disputes on which these conclusions were reached was far too small to be definitive. Further, there was no demand for good behavior by the parents, enforceable by the courts. It is in the child's best interest for the court to make parents behave better, not to deprive the child of one of his parents.

ONE PROPOSAL TO IMPLEMENT THE LEGISLATURE'S EXISTING STATED PREFERENCE FOR JOINT CUSTODY

Polls of the American Academy of Matrimonial Lawyers indicate that 85% of the lawyers have been involved in a case of false allegations and that they believed 50% of all allegations made during custody disputes are false.

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TESTIMONY PREPARED FOR: The Judicial Council of California
"Family Court 2000 Proposal to Improve the Quality of Justice in Family Law Cases"

Mr. Chairman, think about what a custody battle is. Two parents go into court and stand before a judge, each of them begging to spend more time with the child. What message do we want to send to people in this community? Have you heard one witness come forward today and say that the District of Columbia's citizens are suffering from an excess of parenting or an excess of fathering or that children spend too much time with either of their parents? Of course not. We know that just the opposite is true.

We know that children are suffering from the absence of their parents. We know that our children are suffering from insufficient parenting. What is the message that we should be sending through our courts? I submit to you, Mr. Chairman, that if we care about the best interests of children, the message we should send is that we want to encourage the maximum continued involvement of both parents. Continue for them the joint custody that existed during the marriage, take away from those children as little as you absolutely must, presume a continuation of two parents.

We have a saying in our community, "It takes a whole village to raise a child." By what theory of the child's best interests should a court come in and issue an order restricting one parent to mere visitor status? When you have fit and loving parents, when you have two parents in a society that cares about children coming in front of the court and saying, "please give me more time with my child," shouldn't we throw up our hands and say, hallelujah, here is a child who is loved, here is a child who has two parents who want to be involved, let us see what we can do to maximize the contributions of both?

Instead we have a very perverse system, Mr. Chairman, under which the judge says, "No, no, I'm sorry, my job is to pick a winner and pick a loser here." Well, Mr. Chairman, when you pick a winner and pick a loser in a custody fight, all you've done is guarantee that the child is the loser, because that child walked into court with two parents and walks out with only one. The winner-loser mentality that has driven child custody in the District of Columbia is antithetical to the best interests of the child. The proposed legislation is designed to preserve for children what we know they need. It doesn't matter what social pathology you look at, teenage pregnancies, drug abuse, suicide, low self-esteem, school dropout.... You can go through the litany of pathology that the government has to spend money to try to cure. Every single one of them is linked to family breakdown and parental absence. We don't have an excess of parenting. We have a shortage of parenting.

Let's put into place a law which says it is the policy of the District of Columbia to encourage the maximum involvement of both parents, to preserve for each child the joint custody in which that child was born and which continues by nature and by the law until a foolish judge intervenes and takes it away. We don't need to take it away. We need to have a law that says you both are still Mom and Dad.

California's status is particularly interesting because of the way that it was distorted in the earlier testimony. California was under siege a few years ago. Several groups that didn't like joint custody went to the California legislature with an agenda of approximately 30 separate amendments trying to gut the joint custody provisions in California's law. They utterly failed. What California did instead, was that it passed a very simple clarification of its statute which said that shared parenting was equally available as an alternative to sole custody. California has one of the clearest laws repudiating the notion that sole custody is preferred and that shared parenting is, somehow, an ugly stepchild.

California went two steps further, Mr. Chairman, that none of the opponents of shared parenting ever want to talk about and you'll be able to find this very easily. It's both cited in my prepared testimony and is easily found in California statutes. They do two things. They say right up front that it is the policy of the State of California to encourage frequent and continuing contact of the child with both parents. Then they go further; they say we like shared parenting

Facts and Figures About Fathers, Mothers, and Children

79.6% of custodial mothers receive a support award

29.9% of custodial fathers receive a support award

46.9% of non-custodial mothers totally default on support

26.9% of non-custodial fathers totally default on support

20.0% of non-custodial mothers pay support at some level

61.0% of non-custodial fathers pay support at some level

66.2% of single custodial mothers work less than full-time

10.2% of single custodial fathers work less than full-time

7% of single custodial mothers work more than 44 hours weekly

24.5% of single custodial fathers work more than 44 hours weekly

46.2% of single custodial mothers receive public assistance

20.8% of single custodial fathers receive public assistance

—Technical Analysis Paper No. 42 - U.S. Dept. of Health & Human Services - Office of Income Security Policy

90.2% of fathers with joint custody pay the support due

79.1% of fathers with visitation privileges pay the support due

44.5% of fathers with no visitation pay the support due

37.9% of fathers are denied any visitation

66% of all support not paid by non-custodial fathers is due to inability to pay

—1988 Census "Child Support and Alimony: 1989 Series P-60, No. 173 p. 6-7. and U.S. General Accounting Office Report" GAO/HRD-92-39FS January, 1992

50% of mothers see no value in the father's continued contact with his children.

See Surviving the Breakup by Joan Berlin Kelly

40% of mothers reported that they had interfered with the father's visitation....to punish their ex-spouse.

See "Frequency of Visitation...." by Stanford Braver, American Journal of Orthopsychiatry

63% of youth suicides are from fatherless homes

—U.S. D.H.H.S., Bureau of the Census

90% of all homeless and runaway children are from fatherless homes

85% of all children that exhibit behavioral disorders come from fatherless homes

—Center for Disease Control

80% of rapists motivated with displaced anger come from fatherless homes

—Criminal Justice and Behavior, Vol. 14, p. 403-26

71% of all high school dropouts come from fatherless homes

—National Principals Association Report on the State of High Schools

70% of juveniles in state operated institutions come from fatherless homes

—U.S. Dept. of Justice, Special Report, Sept., 1988

85% of all youths sitting in prisons grew up in a fatherless home

—Fulton County Georgia jail populations & Texas Dept. of Corrections, 1992

Translated, this means that children from a fatherless home are:

- **5** times more likely to commit suicide
- **32** times more likely to run away
- **20** times more likely to have behavioral disorders
- **14** times more likely to commit rape
- **9** times more likely to drop out of school
- **10** times more likely to abuse chemical substances
- **9** times more likely to end up in a state operated institution
- **20** times more likely to end up in prison

11,268,000 total custodial mothers
2,907,000 total custodial fathers

—Current Population Reports, U.S. Bureau of the Census, Series P-20, No. 458, 1991

$14,800,000,000 total child support owed
$11,100,000,000 total child support paid

—Current Population Reports, U.S. Bureau of the Census, Series P-123, No. 173, 1988

Percentage of children in single parent families, by year:

1950	**7.1**
1992	**24.0**

—U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-20, Household and Family Characteristics, various years; and Marital Status and Living Arrangements: March, 1988-1990, Nos 433, 445, and 450

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DIVISION OF
SCHOOL PSYCHOLOGY
American Psychological Association

"Children First for 50 Years"

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June 14, 1995

Dr. John Guidubaldi
Research Task Force Chair
U. S. Commission on Child and Family Welfare
Kent State University
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Kent, Ohio 44242-000 1

Dear Dr. Guicubaldi:

I am very pleased to convey to you a preliminary report on the research concerning joint custody. The report has been reviewed and approved by the Operating Committee of Division 16 (School Psychology) of the American Psychological Association. Dr. Joe Perry, of the University of Akron, provided us with this initial draft and I have asked him to chair a task force to provide a more extended report on this same topic in the near future. That report will also be forward to you upon its completion. We appreciate this opportunity to support the very important work of the Commission.

Sincerely,

Beth Doll

Beth Doll, PhD.
Vice President for Social and Ethical Responsibility and
Ethnic Minority Affairs
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VISION OF
School Psychology
American Psychological Association

"Children First for 50 Years"

Preliminary Summary

Empirical Research describing Outcomes of Joint Custody

As per the request of Dr. John Guidubaldi, this report from Division 16 (School Psychology) of the American Psychological Association (APA), summarizes and evaluates the major research concerning joint custody and its impact on children's welfare. Although Dr. Guidubaldi also requested an assessment of empirical studies concerning father involvement in childrearing, specific research on this topic was not currently reviewed **due** to time constraints of the June Commission meeting. However, father involvement was addressed within the context of joint custody research. This preliminary report extends the testimony to the Commission provided by APA representatives, Donald K. Freedheim, PhD., and Joseph D. Perry, PhD. on April 20, 1995 in Cleveland, Ohio. Additional representatives with expertise in these topics will review this report and a more comprehensive review will be submitted to the Commission in the future.

Summary of Joint Custody Research

A search of the empirical research specific to joint custody was conducted. Major data-based studies available at the time of this review have been individually summarized and evaluated relevant to findings and adequacy of the methodology as requested. While flawless studies on such a complex subject are extremely rare as indicated by the evaluations, the goal of this report is to provide a synthesis so that the Commission's policy recommendations may be predicated on the best available empirical base. To minimize some of the confusion in such a highly charged area of study, this review focused on the weight of evidence as determined by both replication of findings and consideration of methodological rigor.

Reviews of the joint custody literature (e.g., Ferreiro, 1990 & Kelly, 1994) have identified issues that are typically considered in supporting or refuting joint custody. These include the impact of joint custody on (a) father involvement with children; (b) best interest of the child standard; (c) child support; (d) relitigation and costs to the family; and (e) parental conflict. The synthesis of the research is reviewed relevant to these issues.

Father Involvement with Children

The weight of evidence from the studies reviewed unambiguously found increased father contact and involvement with children in joint custody versus sole maternal custody divorced families (Albiston Maccoby, & Mnookin, 1990; Arditti 1992, 1992a; Buchanan Maccoby, & Dornbush, 199 1; Greif, 1979; Johnston, Kline & Tschann, 1989; and Luepnitz, 1986). Several of these studies in addition to others (e.g., Emery & Wyer, 1987; Emery, Mathews, & Wyer, 199 i; and

Shrier, Simring, & Shapiro, 1991) have indicated increased father satisfaction with joint versus sole maternal custody.

A major advantage of joint custody may be its ability to address the high rate of current father absence subsequent to divorce documented by Kelly (1994). The conclusion that joint custody has been correlated with increased father involvement was also reported by both Ferreiro (1990) and Kelly (1994) following reviews of the research. This finding generally supports father involvement as related to the second request for information on this topic.

Best Interest of the Child Standard

The research that included child adjustment criteria concerning the study of joint custody will be used relevant to this issue. The two studies with the best methodology (Buchanan, Maccoby, & Dombush, 199 1; Burnett, 199 1) indicated that joint custody versus sole maternal custody was associated with adolescents' positive adjustment. This finding was replicated for children by Abarbanel(1979). Greif (1979), and Luepnitz (1986) but not Johnston, Kline & Tschann (1989) and Kline, Tschann, Johnston & Wallerstein (1989). It is concluded that the present research supports joint custody for facilitating children's adjustment.

The above conclusion is supported by the more generalized research with optimal methodology concerning children's divorce adjustment. Several studies found that increased and reliable visitation by the noncustodial parent (usually the father) predicted positive adjustment of children (e.g. Guidubaldi, Cleminshaw, Perry & Nastasi, 1984; Hetherington, Cox & Cox, 1982; and Wallerstein & Kelly, 1980).

Child Support

Kelly (1994) pointed out that feminists are opposed to joint custody due to concern that child support to mothers will be reduced when compared to sole maternal custody. The consensus of studies that addressed this issue found that child support to mothers is either increased in joint custody families or not significantly different from those with sole maternal custody (Arditti, 1992a; Emery & Wyer, 1987; Emery, Matthews, & Wyer, 1991; Luepnitz, 1986; and Shrier, Simring, Shapiro, 1991).

Relitigation and Costs to the Family

The emotional and financial relitigation costs to families and judicial systems is often cited by both proponents and opponents regarding joint custody. The studies reviewed that investigated this issue consistently indicated decreased relitigation for joint custody versus sole maternal custody (Dudley, 1991; Emery & Wyer, 1987; Emery, Matthews, & Wyer 1991; and Luepnitz, 1986).

Parental Conflict

The replicated finding and the weight of evidence were that joint custody results in either less or no greater conflict than sole maternal custody (Albiston et al., 1990; Arditti, 1992a; Buchanan et al., 1991; Burnett, 1991; Greiff, 1979; Kline et al., 1989; Luepnitz, 1986; and Maccoby et al., 1990). The earlier review of decreased relitigation for joint custody versus sole maternal custody also supports this conclusion. The sole exception to these findings was by Johnston, Kline and Tschann

(1989) but as Ferreiro (1990) pointed out, this study included a biased sample of divorced families referred due to high conflict.

Conclusions

The research reviewed supports the conclusion that joint custody is associated with certain favorable outcomes for children including father involvement, best interest of the child for adjustment outcomes, child support, reduced relitigation costs, and sometimes reduced parental conflict. Kelly (1994) recommended joint custody for increasing the access of both parents which has consistently been shown to promote positive adjustment of children. Kelly (1994) also noted that misinterpretation of research conclusions could be due to political distortion as reflected by the following statement:

> The current practice of feminist writers and fathers' rights groups to use a particular research finding to bolster a political or gender-linked point of view while ignoring other data makes it difficult for legislators, judges, attorneys or parents to obtain a balanced, informed view. (p. 128)

It is hoped that this report provides the Commission with a 'balanced and informed view' based on the empirical research evidence. The need for improved policy to reduce the present adversarial approach that has resulted in primarily sole maternal custody, limited father involvement and maladjustment of both children and parents is critical. Increased mediation, joint custody and parent education are supported for this policy. Comprehensive research on these topics with effective methodology is also critically needed.

References

Albiston, C. R., Maccoby, E. E., & Mnookin, R. R. (1990). Does joint legal custody matter'? Stanford Law and Policy Review, 2,167- 179.

Arbarbanel, A. (1979). Shared parenting after separation and divorce: A study of joint custody. American Journal of Orthopsychiatry, 49, 320-329.

Arditti, J. A. (1992). Differences between fathers with joint custody and noncustodial fathers. American Journal of Orthopsychiatry, 62. 186-195.

Arditti, J. A. (1992a). Factors related to custody, visitation, and child support for divorced fathers: An exploratory analysis. Journal of Divorce and Remarriage, 17,23-42.

Braver, S. H., Wolchik, S. A., Sandler, I. N., Foagas, B. S., Zvetina, D. (199 1). Frequency of visitation by divorced fathers: Differences in reports by fathers and mothers. Journal of Orthopsychiatry. 6 1, 448-454.

Buchanan, C. M., Maccoby, E. E., & Dombush, S. M. (1991). Caught between parents Adolescents experiences in divorced homes. Child Development. 62. 1008-l 029.

Burnett, M. C. (199 1). Impact of joint versus sole custody and quality of co-parental relationship on adjustment of adolescents in remarried families. Behavioral Sciences and the Law, 9. 439-449.

Donnelly, D., & Finkelhor, D. (1992). Does equality in custody arrangements improve the parent-child relationship? Journal of Marriage and the Family. 54,837-845.

Donnelly, D., & Finkelhor, D. (1993). Who has joint custody? Class differences in the determination of custody arrangements. Family Relations, 42, 57-60.

Dudley, J. R. (199 1). The consequences of divorce proceedings for divorced fathers. Journal of Divorce and Remarriage, 16,17 1-193.

Emery, R. E., & Wyer, M. M. (1987). Child custody mediation and litigation: An experimental evaluation of the experience of parents. The Journal of Consulting and Clinical Psychology, 55, 179-186.

Emery, R. E., Matthews, S. G., & Wyer, M. M. (199 1). Child custody mediation and litigation: Further evidence on the differing views of mothers and fathers. The Journal of Consulting and Clinical Psychology, 59, 4 10-4 18.

Ferreiro, B. W. (1990). Presumption of joint custody: A family policy dilemma. Family Relations. 3 9, 426-429.

Greif, J. B. (1979). Fathers, children and joint custody. American Journal of Orthopsychiatry, 49, 3 1 l-3 19.

Guidubaldi, J., Cleminshaw, H. K., Perry, J. D., & Nastasi, B. K. (1984). Impact of family support systems on children's academic and social functioning after divorce. In G. Row, J. Defrain, H. Lingren, R. MacDonald, N. Stinnett, S. VanZant, & R. Williams (Eds.), Family strengths: Continuity and diversity (pp. 19 l-207). Newton, MA: Education Development Center.

Hetherington, E. M., Cox, M., & Cox, R. (1982). Effects of divorce on parents and children. In M. E. Lamb (Ed.), Nontraditional families (pp. 223-288). Hillsdale, NJ: Lawrence Erlbaum.

Johnston, J. R., Kline, M., Tschann, J. M. (1989). Ongoing postdivorce conflict: Effects on children of joint custody and frequent access. American Journal of Orthopsychiatry, 59, 576-592.

Kelly, J. B. (1994). The determination of child custody. The future of children: Children and divorce. 4, 121-142.

Kline, M., Tschann, J. M., Johnston, J. R., & Wallerstein, J. S. (1989). Children's adjustment in joint and sole custody families. Developmental Psychology, 25, 430-438.

Luepnitz, D. A. (1986). A comparison of maternal, paternal, and joint custody: Understanding the varieties of post-divorce family life. Journal of Divorce. 9, 1- 12.

Maccoby, E. E., Depner, C. E., & Mnookin, R. H. (1990). Coparenting in the second year after divorce. Journal of Marriage and the Family. 52. 14 l-l 55.

Shrier, D. K., Simring, S. K., & Shapiro, E. T. (1991). Level of satisfaction of fathers and mothers with joint or sole custody arrangements: Results of a questionnaire. Journal of Divorce and Remarriage. 16,165170.

Wallerstein, J. S., & Kelly, J. B. (1980). Surviving the breakup: How children and parents cope with divorce. New York: Basic Books.

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Session of 1998

SENATE BILL No. 671

By Committee on Judiciary

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AN ACT concerning the civil commitment of sexually violent predators; relating to duties of attorney general and the multidisciplinary team; procedure; transitional and conditional release; amending K.S.A. 59-29a01, 59-29a09, 59-29a11, 59-29a12 and 59-29a13 and K.S.A. 1997 Supp. 59-29a02, 59-29a03, 59-29a04, 59-29a05, 59-29a06, 59-29a07, 59-29a08 and 59-29a10 and repealing the existing sections.

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

New Section 1. This act shall be known and may be cited as ``Stephanie's Law,'' in memory of Stephanie Schmidt, a 19-year old Kansas woman whose life was taken on June 30, 1993, by a previously convicted sex offender and whose death served as the impetus for this law.

Sec. 2. K.S.A. 59-29a01 is hereby amended to read as follows: 59-29a01. The legislature finds that ~~a small but~~ *there exists an* extremely dangerous group of sexually violent predators ~~exist~~ who ~~do not~~ have a mental ~~disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under K.S.A. 59-2901 et seq. and amendments thereto, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The legislature further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure pursuant to the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto is inadequate to address the risk these sexually violent predators pose to society. The legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons defined in K.S.A.~~

~~59-2901 et seq. and amendments thereto, therefore a civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the legislature.~~ *abnormality or personality disorder and who have a significant likelihood to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under K.S.A. 59-2901 et seq. and amendments thereto are inadequate to address the special needs of sexually violent predators and the risks they present to society, the legislature determines that a separate involuntary civil commitment process for the potentially long-term control, care and treatment of sexually violent predators is necessary. The legislature also determines that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer, and the dangers they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons involuntarily committed under K.S.A. 59-2901 et seq.*

Sec. 3. K.S.A. 1997 Supp. 59-29a02 is hereby amended to read as follows: 59-29a02. As used in this act:

(a) ``Sexually violent predator" means any person who has been convicted of ~~or charged with~~ a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in ~~(tri-stars)e predatory~~ acts of sexual violence ~~, if not confined in a secure facility~~.

Very important this deletion goes through as indicated.

(b) ``Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses ~~in a degree constituting such person a menace to the health and safety of others~~.

(c) ~~``Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.~~ ``*Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.*

(d) ``Sexually motivated" means that one of the purposes for which the ~~defendant~~ *person* committed the crime was for the purpose of the ~~defendant's~~ *person's* sexual gratification.

(e) ``Sexually violent offense" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;

(6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. ~~21-2511~~ *21-3511* and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518 and amendments thereto;

(10) *incest as defined in K.S.A. 21-3602 and amendments thereto;*

(11) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto;

(12) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in subparagraphs (1) through ~~(9)~~ *(11)* or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section;

~~(11)~~ *(13)* an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 and 21-3303, and amendments thereto, of a sexually violent offense as defined in this subsection; or

~~(12) any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated.~~

(14) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense.

(f) ``Agency with jurisdiction'' means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and includes the department of corrections, the department of social and rehabilitation services, *the juvenile justice authority* and the Kansas parole board.

(g) ``Convicted of a sexually violent offense'' means convicted of a sexually violent offense, whether by trial, guilty plea, or plea of nolo contendere, found not guilty of such offense by reason of mental illness or found incompetent to stand trial for such offense. It also means a person adjudicated to be a juvenile offender for an act that would constitute a sexually violent offense if committed by a person 18 years of age or older.

(h) ``Person'' means an individual who is a potential or actual subject of proceedings under this act.

(i) ``Treatment staff'' means the persons, agencies or firms employed by or contracted with the secretary to provide treatment, supervision or

other services at the sexually violent predator facility.

(j) ``Transitional release'' means any halfway house, work release or other placement designed to assist the person's adjustment and reintegration into the community once released from commitment.

(k) ``Secretary'' means the secretary of the department of social and

rehabilitation services.

Sec. 4. K.S.A. 1997 Supp. 59-29a03 is hereby amended to read as follows: 59-29a03. (a) ~~When it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02 and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (d), 90 days prior to.~~ *The attorney general ~~and the multidisciplinary team~~ shall be given notice by the agency with jurisdiction when it appears that a person who has been convicted of a sexually violent offense, before:* ← *and the prosecuting attorney where the person was convicted.*

(1) The anticipated release from total confinement ~~of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison~~ *from the department of corrections*;

~~(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305 and amendments thereto;~~

~~(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and amendments thereto; or~~

(2) the anticipated hearing regarding possible release from confinement pursuant to a finding of not guilty by reason of mental illness pursuant to K.S.A. 22-3428 and amendments thereto or guilty but mentally ill pursuant to K.S.A. 22-3430 and amendments thereto;

(3) the anticipated hearing on competency to stand trial after a finding of incompetency to stand trial on a charge of a sexually violent offense;

(4) release *after a finding* of ~~a person who has been found~~ not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, ~~and~~ *when* the jury ~~who returned the verdict of not guilty answers~~ *answered* in the affirmative to the special question asked pursuant to K.S.A. 22-3221 ~~.~~*; or*

(5) the anticipated release from the custody of the commissioner of the juvenile justice authority.

(b) ~~The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection (d) of the following:~~

~~(1) The~~ *Notice shall include the* person's name, identifying factors,

anticipated ~~future residence and~~ *release*, offense history ~~, and~~

~~(2)~~, documentation of institutional adjustment, ~~and any treatment received~~ *treatment records and anticipated future residence*.

(c) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection (d) ~~, members of the prosecutor's review committee appointed as provided in subsection (c)~~ and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct un- ← *Add back in this deletion.*

der this section.

(d) The secretary of corrections shall ~~establish~~ *appoint* a multidisciplinary team which ~~(male symbol)y include individuals from other state agencies to~~ *shall be comprised of two employees from the department of social and rehabilitation services, two employees from the department of corrections and one member from the attorney general's office. Such team shall* review available records of each person referred to such team pursuant to subsection (a). ~~The team;~~ Within 30 days of receiving notice, *the team* shall assess whether or not the person ~~→ cts the definition of a sexually violent predator, as established in K.S.A. 59-29a02 and amendments thereto~~, *according to available records, has ever been diagnosed with a mental abnormality or personality disorder and shall rate the person's risk of reoffending in a sexually violent manner*. The team shall notify the attorney general of its ~~assessment~~ *findings*.

~~(e) The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection (a). The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.~~

Sec. 5. K.S.A. 1997 Supp. 59-29a04 is hereby amended to read as follows: 59-29a04. ~~When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (c) of K.S.A. 59-29a03 and amendments thereto has determined that the person~~ *Upon receiving the multidisciplinary team's findings, when the attorney general determines that a person* meets the definition of a sexually violent predator *as provided in this act*, the attorney general may file a petition ~~, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03 and amendments thereto, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.~~ *with the district court in any county where the person has committed or has been charged with a sexually violent offense. The petition shall allege that the person is a*

and the prosecuting attorney where the person was convicted.

Keep in..add back in this deletion.

or the prosecuting attorney in the county where the person was convicted.

or the prosecuting attorney in the county where the person was convicted.

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sexually violent predator and state facts sufficient to support the allegation.

Sec. 6. K.S.A. 1997 Supp. 59-29a05 is hereby amended to read as follows: 59-29a05. (a) Upon *the* filing of a petition under K.S.A. 59-29a04 *and amendments thereto*, the judge shall determine whether probable cause exists to believe ~~(tri-stars)at~~ the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as

to whether the ~~detained~~ person is a sexually violent predator. At this hearing the court shall ~~: (1)~~ verify the detainer's identity ~~;~~ and ~~(2)~~ determine whether probable cause exists to believe that the person is a sexually violent predator. The ~~state attorney general~~ may rely upon the petition and supplement the petition with additional documentary evidence or live testimony *or both*.

or designee

or the prosecuting attorney where the person was convicted..

(c) At the probable cause hearing ~~as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified:~~ *and at all other hearings pursuant to this act, the person shall have the rights previously specified in addition to the right:* (1) To be represented by counsel *or to have the court appoint counsel if the person is determined to be indigent*; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

Sec. 7. K.S.A. 1997 Supp. 59-29a06 is hereby amended to read as follows: 59-29a06. *(a)* Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05 and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the ~~(Re)spondent~~ *person* will not be substantially prejudiced. ~~At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination~~

~~under this act, such~~

(b) In addition to the previously specified rights, the person may retain experts or professional persons to perform an examination of such person's behalf. ~~When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such~~ *The* examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is *determined to be* indigent, the court, upon the ~~person's~~ request *of the person*, shall determine whether ~~(tri-stars)~~ *such professional* services are necessary and *the* reasonable compensation for such services. If the court determines ~~(tri-stars)~~ *at* the services are necessary and the ~~expert or professional person's~~ requested compensation ~~for such services is~~ reasonable, the court shall assist the person in obtaining ~~an expert or~~ *the* professional ~~person~~ to perform

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an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. *Compensation for the professional person and the appointed lawyer shall be an expense of the county in which the petition has been filed.*

(c) The person, the attorney general, or the judge shall have the right to demand ~~(tri-stars)at~~ the trial be before a jury ~~. Such,~~ *provided a written* demand ~~for the trial to be before a jury shall be filed, in writing,~~ *is filed* at least four days prior to trial. ~~Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto.~~ If no demand is made *in accordance with the provisions of this subsection,* the trial shall be ~~before~~ *to* the court. *A jury under this act shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number less than 12. The person and the attorney general shall each have six peremptory challenges, or in the case of a jury of less than 12, a proportionally equal number of peremptory challenges.*

or the prosecuting attorney in the county where the person was convicted.

Sec. 8. K.S.A. 1997 Supp. 59-29a07 is hereby amended to read as follows: 59-29a07. (a) The court or jury shall determine whether, ~~beyond a reasonable doubt by clear and convincing evidence,~~ the person is a sexually violent predator. If ~~such~~ *the* determination that the person is a sexually violent predator is made by a jury, such determination ~~shall be by unanimous verdict of such jury. Such~~ *must be reached by at least 3/4 of the jurors. The* determination *of the jury* may be appealed *by the person.* ~~If~~ *In the event* the court or jury determines ~~(tri-stars)at~~ the person is a sexually violent predator, the person shall be committed to the custody

beyond a reasonable doubt

shall be by unanimous verdict of such jury.

of the secretary ~~of social and rehabilitation services~~ for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by, *or under contract with,* the department of social and rehabilitation services. At all times, persons committed ~~for control, care and treatment by the department of social and rehabilitation services~~ *to the custody of the secretary* pursuant to this act shall be kept in a secure facility, *separate* and ~~such persons shall be~~ segregated ~~at all times~~ from any other patient under the supervision of the secretary ~~of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to this act shall be kept in a facility or building separate from any other patient under the supervision of the secretary~~, *except as authorized by the court pursuant to K.S.A. 59-29a12 and amendments thereto.* The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary

of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. ~~If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial,~~

(b) In the event a mistrial is declared by the court, the attorney general may refile the case and the court shall direct ~~(tri-stars)at~~ the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any ~~subsequent~~ *such* trial ~~following a mistrial~~ shall be held within 90 days of the ~~previous trial~~ *mistrial having been declared*, unless such ~~subsequent~~ trial is continued as provided in K.S.A. 59-29a06 and amendments thereto.

~~(b)~~ *(c)* If the ~~person~~ *attorney general has filed a petition pursuant to the provisions of K.S.A. 59-29a05 and amendments thereto, seeking the commitment of a person who had been* charged with a sexually violent offense ~~has~~ *but who had* been found incompetent to stand trial, and *who* is *now* about to be released pursuant to K.S.A. 22-3305 and amendments thereto, ~~and such person's commitment is sought pursuant to subsection (a),~~ the court shall ~~first hear evidence and~~, *prior to or in conjunction with the trial provided for in K.S.A. 59-29a07 and amendments thereto, hold a hearing to* determine whether the person did *actually* commit the act or acts *the person had been* charged. The hearing on this issue ~~must~~ *shall* comply with all the procedures specified in ~~(tri-stars)is section~~ *K.S.A. 59-29a07 and amendments thereto*. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to de-

fendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this ~~section~~ *act*.

New Sec. 9. Once a person is committed under this act, venue shall be permanently transferred to the county where the sexually violent predator facility is located.

New Sec. 10. Any person for whom a petition pursuant to this act has been filed is in the secure confinement of the state and is not eligible for bail, bond, house arrest or any other measures releasing the person from the physical protective custody of the state, notwithstanding the

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provisions of K.S.A. 59-29a10 and amendments thereto.

Sec. 11. K.S.A. 1997 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08.

(a) Each person committed under this act shall have a current examination of the person's mental ~~condition made~~ *abnormality or personality disorder* once ~~every~~ *each* year. ~~The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and will not engage in acts~~

~~of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.~~

(b) In the event the examination does not reveal that the person's mental abnormality or personality disorder has so changed so as to warrant that the person be considered for transitional release, then the treatment staff shall forward a report of its examination to the court with venue. The court shall review the same but shall not be required to conduct a formal hearing. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard.

The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(c) In the event the examination does reveal that the person's mental abnormality or personality disorder has so changed in the opinion of the treatment staff so as to warrant that the person be considered for transitional release, then the treatment staff shall notify the secretary of that fact. The secretary shall within 30 days convene an evaluation panel, to be comprised of five persons appointed by the secretary, who shall consist of persons with a background or knowledge in the field of mental health treatment and related areas, and include one person who shall be a member of the general public. The evaluation panel shall meet and review the treatment staff's report, the person's treatment records and any other information the evaluation panel deems appropriate. The evaluation panel may interview the person as well.

(d) The report of the evaluation panel and any minority report of the evaluation panel, along with the report of the examination by the treatment staff, shall be forwarded to the court with venue. The court shall

review the same but shall not be required to conduct a formal hearing to review the reports if both the evaluation panel and treatment staff reports do not recommend that the person be considered for transitional release. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard. The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(e) If the reports of the treatment staff and of the evaluation panel both recommend that the person should be considered for transitional release, then the court shall conduct a formal hearing to determine if the person should be placed in transitional release. At this hearing the person shall be entitled to the same rights enumerated in K.S.A. 59-29a05 and amendments thereto. The attorney general shall have the right to have the person evaluated by experts chosen by the attorney general. The person shall also have the right to be evaluated by experts of such person's own choosing, who have been appointed by the court in the event the person is determined to be indigent. The hearing shall be to the court. If, after the hearing, the court is convinced by clear and convincing evidence that the person is appropriate for transitional release, the court shall order that the person be placed in transitional release. Otherwise, the court shall order that the person remain in secure commitment.

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(f) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(g) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court with venue to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00

p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(h) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court with venue. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

Sec. 12. K.S.A. 1997 Supp. 59-29a10 is hereby amended to read as follows: 59-29a10. ~~If the secretary of the department of social and rehabilitation services determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released, the secretary shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the peti-~~

~~tioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.~~ *(a) During any period the person is in transitional release, the person committed under this act at least annually, and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the person's mental abnormality or personality disorder has so changed so as to warrant such person being considered for conditional release. In the event the examination does not reveal that the person's mental abnormality or personality disorder has so changed so as to warrant that the person be considered for conditional release, then the treatment staff shall forward a report of its examination to the court with venue. The court shall review the same but shall not be required to conduct a formal hearing to review the report. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed*

that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard. The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(b) In the event the examination does reveal that the person's mental abnormality or personality disorder has so changed in the opinion of the treatment staff so as to warrant that the person be considered for conditional release, then the treatment staff shall notify the secretary of that fact within 30 days. The secretary shall notify the evaluation panel and the evaluation panel shall meet and review the treatment staff's report, the person's treatment records and any other information the evaluation panel deems appropriate. The evaluation panel may interview the person as well. The report of the evaluation panel and any minority report of the evaluation panel, along with the report of the examination by the treatment staff, shall be forwarded to the court with venue. The court shall review the same but shall not be required to conduct a formal hearing to review the reports if both the evaluation panel and treatment staff reports do not recommend that the person be considered for conditional release. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard. The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(c) If the reports of the treatment staff and of the evaluation panel both recommend that the person should be considered for conditional

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release, then the court shall conduct a formal hearing to determine if the person should be placed on conditional release. At this hearing, the person shall be entitled to the same rights enumerated in K.S.A. 59-29a05 and amendments thereto. The attorney general shall have the right to have the person evaluated by experts chosen by the attorney general. The person shall also have the right to be evaluated by experts of such person's own choosing, who have been appointed by the court in the event the person is determined to be indigent. The hearing shall be to the court. If, after the hearing, the court is convinced by clear and convincing evidence that the person is appropriate for conditional release, the court shall order that the person be placed on conditional release. Otherwise, the court

shall order that the person remain either in secure commitment or in transitional release.

New Sec. 13. (a) If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff and evaluation panel, shall establish a plan of treatment which the person shall be ordered to follow. This plan of treatment may include, but shall not be limited to: Provisions as to where the person shall reside and with whom, taking prescribed medications, attending individual and group counseling, maintaining employment, having no contact with children, not frequenting facilities, locations, events or otherwise in which children are likely to be present and not engaging in activities in which contact with children is likely. Upon a showing by the person that the person accepts the plan of treatment and is prepared to follow it, the court shall release the person from the transitional release program.

(b) After a minimum of five years have passed in which the person has been free of violations of conditions of such person's treatment plan, the treatment staff, or other professionals directed by the court may examine such person to determine if the person's mental abnormality or personality disorder has changed so as to warrant such person being considered for final discharge. In the event the examination does not reveal that the person's mental abnormality or personality disorder has so changed so as to warrant that the person be considered for final discharge, then the person preparing the report shall forward the report to the court with venue. The court shall review the same but shall not be required to conduct a formal hearing to review the report. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard. The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(c) In the event the examination does reveal that the person's mental

abnormality or personality disorder has so changed in the opinion of the treatment staff preparing the report so as to warrant that the person be considered for final discharge, the treatment staff shall notify the secretary of that fact within 30 days. The secretary shall notify the evaluation panel and the evaluation panel shall meet and review the treatment staff's report, the person's treatment records and any other information the evaluation panel deems appropriate. The evaluation panel may interview the person as well. The report of the evaluation panel and any minority report

of the evaluation panel, along with the report of the examination by the treatment staff, shall be forwarded to the court with venue. The court shall review the same but shall not be required to conduct a formal hearing to review the reports if both the evaluation panel and treatment staff reports do not recommend that the person be considered for final discharge. However, if the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be finally discharged or if both reports of the evaluation panel and the treatment staff recommend that the person is safe to be finally discharged, the court shall then set a formal hearing on the issue. The attorney general shall have the burden of proof by a clear and convincing standard. The person shall have the same rights as enumerated in K.S.A. 59-29a05 and amendments thereto. The attorney general shall have the right to have the person evaluated by experts chosen by the attorney general. The person shall also have the right to be evaluated by experts of such person's own choosing, who have been appointed by the court in the event the person is determined to be indigent. The hearing shall be to the court and the attorney general shall have the burden to show by clear and convincing evidence that the person remains a sexually violent predator and is not appropriate for final discharge. Upon such proof, the court shall continue custody of the person with the secretary for placement in a secure facility, transitional release program or conditional release program. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.

(d) At any time during which the person is on conditional release and the professional person designated by the court in the treatment plan to monitor the person's compliance with it determines that the person has violated any material condition of that plan, that professional person may request the district court with venue to issue an emergency ex parte order directing any law enforcement officers to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(e) Upon the person being returned to the secure commitment facility from conditional release, notice thereof shall be given by the secretary to the court with venue. The court shall set the matter for a hearing

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within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of conditional release. The hearing

shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility, to the transitional release program or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either the transitional release program or to conditional release.

(f) The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under this act.

Sec. 14. K.S.A. 59-29a11 is hereby amended to read as follows: 59-29a11. Nothing in this act shall prohibit a person *committed as a sexually violent predator under this act* from filing a petition ~~for seeking transitional release, conditional release or final~~ discharge ~~pursuant to this act. However, if a person has previously filed a petition for discharge without the secretary of the department of social and rehabilitation services approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted.~~ *at any time during such person's commitment.* Upon receipt of ~~a first or subsequent such~~ petition from ~~committed persons without the secretary's approval~~ *the person*, the court shall endeavor ~~whenever possible~~ to review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing. *In the event the court finds grounds in the petition upon which to believe the person's mental abnormality or personality disorder has so changed so as to warrant such person being considered for transitional release, conditional release or final discharge, the court may set the matter for a formal hearing and shall send notice to the attorney general, the person and the secretary. At that hearing, the court shall determine what further proceedings should be held pursuant to this act, or that the person's petition should be denied.*

Sec. 15. K.S.A. 59-29a09 is hereby amended to read as follows: 59-29a09. The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for *control,* care and treatment *and such persons shall be entitled to the rights enumerated in K.S.A. 59-2978 and amendments thereto, except that such person shall not be entitled to the right enumerated in subsection (a)(3) of K.S.A. 59-2978 and amendments thereto.*

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Sec. 16. K.S.A. 59-29a12 is hereby amended to read as follows: 59-29a12. The secretary ~~of social and rehabilitation services~~ shall be respon-

sible for all cost relating to the evaluation and treatment of persons committed to the secretary's custody under any provision of this act. Reimbursement may be obtained by the secretary for the cost of care and treatment, *including placement in transitional release*, of persons committed to the secretary's custody pursuant to K.S.A. 59-2006 and amendments thereto.

Sec. 17. K.S.A. 59-29a13 is hereby amended to read as follows: 59-29a13. In addition to any other information required to be released under this act, prior to the release of a person committed under this act, the secretary ~~of the department of social and rehabilitation services~~ shall give written notice of such *placement or* release to any victim of the person's activities or crime who is alive and whose address is known to the secretary ~~or, if the victim is deceased, to the victim's family, if the family's address is known to the secretary~~. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

Sec. 18. K.S.A. 59-29a01, 59-29a09, 59-29a11, 59-29a12 and 59-29a13 and K.S.A. 1997 Supp. 59-29a02, 59-29a03, 59-29a04, 59-29a05, 59-29a06, 59-29a07, 59-29a08 and 59-29a10 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

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