

Approved: March 19, 1998  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:13 a.m. on March 18, 1998 in Room 514S of the Capitol.

All members were present except: Senator Feleciano (excused)

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

Conferees appearing before the committee: Randy Hearrell, Kansas Judicial Council  
Brian Moline, Attorney  
Representative Nancy Kirk

Others attending: see attached list

The minutes of the following meetings: March 10 (pm), March 11 (am), and March 11 (pm), March 12, and March 16, were approved on a motion by Senator Bond and a second by Senator Schraad. Carried.

### HB 2626 - Court orders during the pendency of a divorce action

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

Conferee Hearrell thanked Committee for hearing HB 2626 and HB 2627 which are Judicial Council bills. By way of introduction, he briefly reviewed Conferee Moline's credentials.

Conferee Moline discussed each of the Judicial Council's proposed amendments HB 2626 and HB 2627. He covered situations the statute currently addresses and explained how the proposed changes will effect these situations. (attachment 1 and 2) Discussion followed with clarification by Conferee Moline of certain legal terms stated in the bill.

### HB 2788 - The court may proceed with a child in need of care proceeding without notifying both parents if one parent is the sole legal custodian of the child or only one parent is listed on the birth certificate.

Conferee Kirk, testifying in favor of HB 2627, stated that HB 2788 had been amended into HB 2627. She explained the purpose of the Shawnee County Delegation's amendments to HB 2627 (identified in script in the bill), discussing the situation of truancy problems in filing petitions on a child in need of care and the need for a petition which would expedite intervention for the child in need of care. (no attachment) With little discussion forthcoming, Senator Goodwin moved to pass HB 2627 out favorably, Senator Harrington seconded. Motion carried. Senator Oleen moved to pass HB 2626 out favorably, Senator Goodwin seconded. Motion carried.

### SB 375 - Abuse, neglect and exploitation of certain persons

The Chair presented a subcommittee report on SB 375, a bill which, he stated, was a result of a Children's Symposium held in 1997. He stated that the subcommittee recommended rejection of all of the amendments between sponsors and acceptance of two amendments by the Kansas State Nurses Association. These amendments relate to the ABUSE sections: ...any sexual act by a caretaker with a resident, adding, "except when caretaker is a spouse to the resident" and definition of abuse section to change the word "inappropriate" to "unreasonable". Senator Bond moved to amend the bill as proposed by the KSNA. Senator Petty inquired about the proposal to include as reporters of child abuse, home health aides and independent living counselors. The Chair explained that the intent of the bill was to bring together KDHE and SRS policies on abuse reporting. After further discussion, Senator Petty made a substitute motion to support the work of the subcommittee in addition to adding home health aides and independent living counselors. The Chair called for a second and there being none, stated the motion died for lack of a second. Motion on the floor by Senator Bond was seconded by Senator Goodwin. Motion carried 9-1 with Senator Pugh voting nay. Senator Bond made a motion to pass SB 375 out favorably as amended, Senator Goodwin seconded. Carried.

**HB 2854 - Authentication of governmental records as a condition to their admission into evidence.**

Senator Pugh presented a report of his subcommittee's work on **HB 2854** and discussed the amendments they recommend: language changes and acceptance of certified records when the record is kept in a foreign state or country. (attachment 3) Senator Pugh moved to amend **HB 2854** as recommended by the subcommittee and to move the bill out favorably, Senator Oleen seconded. Motion carried.

The meeting adjourned at 10:55 a.m. The next scheduled meeting is Thursday, March 19.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-18-98

| NAME                     | REPRESENTING                                 |
|--------------------------|--|
| Erin Malone              | Ks Judicial Council                          |
| Frederic M. Neaveley     | Ks Judicial Council                          |
| Dicklyn Kelsey           | DOB  |
| Mary Hill                | SRS-CFS                                      |
| Rachelle Davis           | Capitol Experience                           |
| Zanny Whitfield          | Capitol Experience                           |
| GREG DEBACKER            | National Congress for Fathers & Children     |
| Nathan Milne             | Capitol Experience                           |
| Chris C. Adams           | Capitol Experience '98                       |
| Audrey Allison-Gallimore | Farm Bureau Capitol Experience '98           |
| Erol M. Kinkaid          | Douglas Farm Bureau's Capitol Experience '98 |
| Clint Tomberger          | Capitol Experience '98                       |
| Orion Kinkaid            | Capitol Experience '98                       |
| Shari Gratts             | Capitol Experience '98                       |
| Amel S. S. S.            | Capitol Experience '98                       |
| Lisa Gilliland           | Capitol Experience '98                       |
| * Chelsea Wilson *       | CE '98 FR DGC                                |
| * Ryan Davis *           | Capitol Experience                           |
| John & Evelyn Nelson     | AARP   |

Ron Smith

Ks Bar Assoc



# HOUSE BILL No. 2626

By Committee on Judiciary

1-15

9 AN ACT concerning civil procedure; relating to orders during a divorce;  
10 relating to child custody; amending K.S.A. 60-1607 and K.S.A. 1997  
11 Supp. 60-1610 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 60-1607 is hereby amended to read as follows:  
15 60-1607. (a) *Permissible orders*. After a petition for divorce, annulment  
16 or separate maintenance has been filed, *and during the pendency of the*  
17 *action prior to final judgment* the judge assigned to hear the action may,  
18 without requiring bond, make and enforce by attachment, orders which:

19 (1) Jointly restrain the parties with regard to disposition of the prop-  
20 erty of the parties and provide for the use, occupancy, management and  
21 control of that property;

22 (2) restrain the parties from molesting or interfering with the privacy  
23 or rights of each other;

24 (3) provide for the custody of the minor children and the support, if  
25 necessary, of either party and of the minor children during the pendency  
26 of the action;

27 (4) make provisions, if necessary, for the expenses of the suit, includ-  
28 ing reasonable attorney's fees, that will insure to either party efficient  
29 preparation for the trial of the case; or

30 (5) require an investigation by court service officers into any issue  
31 arising in the action.

32 (b) *Ex parte orders*. Orders authorized by subsections (a)(1), (2) and  
33 (3) may be entered after *ex parte* hearing upon compliance with rules of  
34 the supreme court, but no *ex parte* order shall have the effect of changing  
35 the custody of a minor child from the parent who has had the sole *de*  
36 *facto* custody of the child to the other parent unless there is sworn tes-  
37 timony to support a showing of extraordinary circumstances. If an inter-  
38 locutory order is issued *ex parte*, the court shall hear a motion to vacate  
39 or modify the order within ~~10~~ 15 days of the date that a party requests a  
40 hearing whether to vacate or modify the order. In the absence, disability,  
41 or disqualification of the judge assigned to hear the action, any other  
42 judge of the district court may make any order authorized by this section,  
43 including vacation or modification or any order issued by the judge as-

*Interlocutory orders - Both sides present  
+ emb. order  
pending final proceeding - ex parte -  
judge issues with other side*

### Judicial Council Comments

This clarifies that interlocutory orders under this section are permitted only during the pendency of the divorce, separate maintenance or annulment action. Once there is a final decree under K.S.A. 60-1610, the court no longer has jurisdiction to issue more orders under this section.

The time in which a court is required to hold a hearing on a change of custody is increased from 10 to 15 days, which is more realistic with court schedules.

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1 signed to hear the action.

2 (c) *Support orders.* (1) An order of support obtained pursuant to this  
3 section may be enforced by an order of garnishment as provided in this  
4 section.

5 (2) No order of garnishment shall be issued under this section unless:  
6 (A) Ten or more days have elapsed since the order of support was served  
7 upon the party required to pay the support, and (B) the order of support  
8 contained a notice that the order of support may be enforced by garnish-  
9 ment and that the party has a right to request an opportunity for a hearing  
10 to contest the issuance of an order of garnishment, if the hearing is re-  
11 quested by motion filed within five days after service of the order of  
12 support upon the party. If a hearing is requested, the court shall hold the  
13 hearing within five days after the motion requesting the hearing is filed  
14 with the court or at a later date agreed to by the parties.

15 (3) No bond shall be required for the issuance of an order of gar-  
16 nishment pursuant to this section. Except as provided in this section,  
17 garnishments authorized by this section shall be subject to the procedures  
18 and limitations applicable to other orders of garnishment authorized by  
19 law.

20 (4) A party desiring to have the order of garnishment issued shall file  
21 an affidavit with the clerk of the district court stating that:

22 (A) The order of support contained the notice required by this sub-  
23 section;

24 (B) ten or more days have elapsed since the order of support was  
25 served upon the party required to pay the support; and

26 (C) either no hearing was requested on the issuance of an order of  
27 garnishment within the five days after service of the order of support  
28 upon the party required to pay the same or a hearing was requested and  
29 held and the court did not prohibit the issuance of an order of garnish-  
30 ment.

31 (d) *Service of process.* Service of process served under subsection  
32 (a)(1) and (2) shall be by personal service and not by certified mail return  
33 receipt requested.

34 Sec. 2. K.S.A. 1997 Supp. 60-1610 is hereby amended to read as  
35 follows: 60-1610. A decree in an action under this article may include  
36 orders on the following matters:

37 (a) *Minor children.* (1) *Child support and education.* The court shall  
38 make provisions for the support and education of the minor children. The  
39 court may modify or change any prior order, including any order issued  
40 in a title IV-D case, within three years of the date of the original order  
41 or a modification order, when a material change in circumstances is  
42 shown, irrespective of the present domicile of the child or the parents. If  
43 more than three years has passed since the date of the original order or

1 modification order, a material change in circumstance need not be shown.  
2 The court may make a modification of child support retroactive to a date  
3 at least one month after the date that the motion to modify was filed with  
4 the court. Any increase in support ordered effective prior to the date the  
5 court's judgment is filed shall not become a lien on real property pursuant  
6 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of  
7 custodial arrangement ordered by the court, the court may order the child  
8 support and education expenses to be paid by either or both parents for  
9 any child less than 18 years of age, at which age the support shall ter-  
10minate unless: (A) The parent or parents agree, by written agreement  
11approved by the court, to pay support beyond the time the child reaches  
1218 years of age; (B) the child reaches 18 years of age before completing  
13the child's high school education in which case the support shall not ter-  
14minate automatically, unless otherwise ordered by the court, until June  
1530 of the school year during which the child became 18 years of age if  
16the child is still attending high school; or (C) the child is still a bona fide  
17high school student after June 30 of the school year during which the  
18child became 18 years of age, in which case the court, on motion, may  
19order support to continue through the school year during which the child  
20becomes 19 years of age so long as the child is a bona fide high school  
21student and the parents jointly participated or knowingly acquiesced in  
22the decision which delayed the child's completion of high school. The  
23court, in extending support pursuant to subsection (a)(1)(C), may impose  
24such conditions as are appropriate and shall set the child support utilizing  
25the guideline table category for 16-year through 18-year old children.  
26Provision for payment of support and educational expenses of a child after  
27reaching 18 years of age if still attending high school shall apply to any  
28child subject to the jurisdiction of the court, including those whose sup-  
29port was ordered prior to July 1, 1992. If an agreement approved by the  
30court prior to July 1, 1988, provides for termination of support before the  
31date provided by subsection (a)(1)(B), the court may review and modify  
32such agreement, and any order based on such agreement, to extend the  
33date for termination of support to the date provided by subsection  
34(a)(1)(B). If an agreement approved by the court prior to July 1, 1992,  
35provides for termination of support before the date provided by subsec-  
36tion (a)(1)(C), the court may review and modify such agreement, and any  
37order based on such agreement, to extend the date for termination of  
38support to the date provided by subsection (a)(1)(C). For purposes of this  
39section, "bona fide high school student" means a student who is enrolled  
40in full accordance with the policy of the accredited high school in which  
41the student is pursuing a high school diploma or a graduate equivalency  
42diploma (GED). In determining the amount to be paid for child support,  
43the court shall consider all relevant factors, without regard to marital

1 misconduct, including the financial resources and needs of both parents,  
2 the financial resources and needs of the child and the physical and emo-  
3 tional condition of the child. Until a child reaches 18 years of age, the  
4 court may set apart any portion of property of either the husband or wife,  
5 or both, that seems necessary and proper for the support of the child.  
6 Every order requiring payment of child support under this section shall  
7 require that the support be paid through the clerk of the district court or  
8 the court trustee except for good cause shown.

9 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to  
10 the provisions of the uniform child custody jurisdiction act (K.S.A. 38-  
11 1301 *et seq.*, and amendments thereto), the court may change or modify  
12 any prior order of custody when a material change of circumstances is  
13 shown, *but no ex parte order shall have the effect of changing the custody*  
14 *of a minor child from the parent who has had the sole de facto custody*  
15 *of the child to the other parent unless there is sworn testimony to support*  
16 *a showing of extraordinary circumstances. If an interlocutory order is*  
17 *issued ex parte, the court shall hear a motion to vacate or modify the*  
18 *order within 15 days of the date that a party requests a hearing whether*  
19 *to vacate or modify the order.*

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

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

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

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

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

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

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

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

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

42 (vi) the willingness and ability of each parent to respect and appre-  
43 ciate the bond between the child and the other parent and to allow for a

This amendment is consistent with language of K.S.A. 60-1607, which states that there shall be no ex parte orders changing child custody from a parent who has sole de facto custody to the other parent unless there is sworn testimony of extraordinary circumstances. Extraordinary circumstances have been interpreted to mean child abuse or neglect. If the court does issue an ex parte order changing custody under these circumstances, the court is required to hold a hearing within 15 days if a party requests a hearing on the issue of vacating or modifying the order.



1 continuing relationship between the child and the other parent; and  
2 (vii) evidence of spousal abuse.

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

8 (4) *Types of custodial arrangements.* Subject to the provisions of this  
9 article, the court may make any order relating to custodial arrangements  
10 which is in the best interests of the child. The order shall include, but  
11 not be limited to, one of the following, in the order of preference:

12 (A) *Joint custody.* The court may place the custody of a child with  
13 both parties on a shared or joint-custody basis. In that event, the parties  
14 shall have equal rights to make decisions in the best interests of the child  
15 under their custody. When a child is placed in the joint custody of the  
16 child's parents, the court may further determine that the residency of the  
17 child shall be divided either in an equal manner with regard to time of  
18 residency or on the basis of a primary residency arrangement for the child.  
19 The court, in its discretion, may require the parents to submit a plan for  
20 implementation of a joint custody order upon finding that both parents  
21 are suitable parents or the parents, acting individually or in concert, may  
22 submit a custody implementation plan to the court prior to issuance of a  
23 custody decree. If the court does not order joint custody, it shall include  
24 in the record the specific findings of fact upon which the order for custody  
25 other than joint custody is based.

26 (B) *Sole custody.* The court may place the custody of a child with one  
27 parent, and the other parent shall be the noncustodial parent. The cus-  
28 todial parent shall have the right to make decisions in the best interests  
29 of the child, subject to the visitation rights of the noncustodial parent.

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

32 (D) *Nonparental custody.* If during the proceedings the court deter-  
33 mines that there is probable cause to believe that: (i) The child is a child  
34 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-  
35 1502 and amendments thereto; (ii) neither parent is fit to have custody;  
36 or (iii) the child is currently residing with such child's grandparent, grand-  
37 parents, aunt or uncle and such relative has had actual physical custody  
38 of such child for a significant length of time, the court may award tem-  
39 porary custody of the child to such relative, another person or agency if  
40 the court finds the award of custody to such relative, another person or  
41 agency is in the best interests of the child. In making such a custody  
42 order, the court shall give preference, to the extent that the court finds  
43 it is in the best interests of the child, first to awarding such custody to a

1 relative of the child by blood, marriage or adoption and second to award-  
2 ing such custody to another person with whom the child has close emo-  
3 tional ties. The court may make temporary orders for care, support, ed-  
4 ucation and visitation that it considers appropriate. Temporary custody  
5 orders are to be entered in lieu of temporary orders provided for in K.S.A.  
6 38-1542 and 38-1543, and amendments thereto, and shall remain in effect  
7 until there is a final determination under the Kansas code for care of  
8 children. An award of temporary custody under this paragraph shall not  
9 terminate parental rights nor give the court the authority to consent to  
10 the adoption of the child. When the court enters orders awarding tem-  
11 porary custody of the child to an agency or a person other than the parent  
12 but not a relative as described in subpart (iii), the court shall refer a  
13 transcript of the proceedings to the county or district attorney. The county  
14 or district attorney shall file a petition as provided in K.S.A. 38-1531 and  
15 amendments thereto and may request termination of parental rights pur-  
16 suant to K.S.A. 38-1581 and amendments thereto. The costs of the pro-  
17 ceedings shall be paid from the general fund of the county. When a final  
18 determination is made that the child is not a child in need of care, the  
19 county or district attorney shall notify the court in writing and the court,  
20 after a hearing, shall enter appropriate custody orders pursuant to this  
21 section. If the same judge presides over both proceedings, the notice is  
22 not required. Any disposition pursuant to the Kansas code for care of  
23 children shall be binding and shall supersede any order under this section.  
24 When the court enters orders awarding temporary custody of the child  
25 to a relative as described in subpart (iii), the court shall annually review  
26 the temporary custody to evaluate whether such custody is still in the best  
27 interests of the child. If the court finds such custody is in the best interests  
28 of the child, such custody shall continue. If the court finds such custody  
29 is not in the best interests of the child, the court shall determine the  
30 custody pursuant to this section.

31 (b) *Financial matters.* (1) *Division of property.* The decree shall di-  
32 vide the real and personal property of the parties, including any retire-  
33 ment and pension plans, whether owned by either spouse prior to mar-  
34 riage, acquired by either spouse in the spouse's own right after marriage  
35 or acquired by the spouses' joint efforts, by: (A) a division of the property  
36 in kind; (B) awarding the property or part of the property to one of the  
37 spouses and requiring the other to pay a just and proper sum; or (C)  
38 ordering a sale of the property, under conditions prescribed by the court,  
39 and dividing the proceeds of the sale. Upon request, the trial court shall  
40 set a valuation date to be used for all assets at trial, which may be the  
41 date of separation, filing or trial as the facts and circumstances of the case  
42 may dictate. The trial court may consider evidence regarding changes in  
43 value of various assets before and after the valuation date in making the

1 division of property. In dividing defined-contribution types of retirement  
2 and pension plans, the court shall allocate profits and losses on the non-  
3 participant's portion until date of distribution to that nonparticipant. In  
4 making the division of property the court shall consider the age of the  
5 parties; the duration of the marriage; the property owned by the parties;  
6 their present and future earning capacities; the time, source and manner  
7 of acquisition of property; family ties and obligations; the allowance of  
8 maintenance or lack thereof; dissipation of assets; the tax consequences  
9 of the property division upon the respective economic circumstances of  
10 the parties; and such other factors as the court considers necessary to  
11 make a just and reasonable division of property. The decree shall provide  
12 for any changes in beneficiary designation on: (A) Any insurance or an-  
13 nuity policy that is owned by the parties, or in the case of group life  
14 insurance policies, under which either of the parties is a covered person;  
15 (B) any trust instrument under which one party is the grantor or holds a  
16 power of appointment over part or all of the trust assets, that may be  
17 exercised in favor of either party; or (C) any transfer on death or payable  
18 on death account under which one or both of the parties are owners or  
19 beneficiaries. Nothing in this section shall relieve the parties of the ob-  
20 ligation to effectuate any change in beneficiary designation by the filing  
21 of such change with the insurer or issuer in accordance with the terms  
22 of such policy.

23 (2) *Maintenance*. The decree may award to either party an allowance  
24 for future support denominated as maintenance, in an amount the court  
25 finds to be fair, just and equitable under all of the circumstances. The  
26 decree may make the future payments modifiable or terminable under  
27 circumstances prescribed in the decree. The court may make a modifi-  
28 cation of maintenance retroactive to a date at least one month after the  
29 date that the motion to modify was filed with the court. In any event, the  
30 court may not award maintenance for a period of time in excess of 121  
31 months. If the original court decree reserves the power of the court to  
32 hear subsequent motions for reinstatement of maintenance and such a  
33 motion is filed prior to the expiration of the stated period of time for  
34 maintenance payments, the court shall have jurisdiction to hear a motion  
35 by the recipient of the maintenance to reinstate the maintenance pay-  
36 ments. Upon motion and hearing, the court may reinstate the payments  
37 in whole or in part for a period of time, conditioned upon any modifying  
38 or terminating circumstances prescribed by the court, but the reinstate-  
39 ment shall be limited to a period of time not exceeding 121 months. The  
40 recipient may file subsequent motions for reinstatement of maintenance  
41 prior to the expiration of subsequent periods of time for maintenance  
42 payments to be made, but no single period of reinstatement ordered by  
43 the court may exceed 121 months. Maintenance may be in a lump sum,

1 in periodic payments, on a percentage of earnings or on any other basis.  
2 At any time, on a hearing with reasonable notice to the party affected,  
3 the court may modify the amounts or other conditions for the payment  
4 of any portion of the maintenance originally awarded that has not already  
5 become due, but no modification shall be made without the consent of  
6 the party liable for the maintenance, if it has the effect of increasing or  
7 accelerating the liability for the unpaid maintenance beyond what was  
8 prescribed in the original decree. Every order requiring payment of main-  
9 tenance under this section shall require that the maintenance be paid  
10 through the clerk of the district court or the court trustee except for good  
11 cause shown.

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

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

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

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

37 Sec. 3. K.S.A. 60-1607 and K.S.A. 1997 Supp. 60-1610 are hereby  
38 repealed.

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

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(Revised 2/98)

HOUSE BILL No. 2627

By Committee on Judiciary

1-15

10 AN ACT concerning the Kansas parentage act [children]; relating to  
11 notice of change in child's residence [under the Kansas parentage  
12 act; relating to the filing of the petition and the summons in a  
13 child in need of care case; amending K.S.A. 38-1531, 38-1532  
14 and 38-1533 and repealing the existing sections].

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

17 [New] Section 1. (a) Except as provided in subsection (d), a parent  
18 entitled to the custody of a child pursuant to K.S.A. 38-1121, and amend-  
19 ments thereto, shall give written notice to the other parent who has been  
20 granted custodial or visitation rights pursuant to subsection (d) of K.S.A.  
21 38-1121, and amendments thereto, not less than 21 days prior to changing  
22 the residence of the child to a place outside this state or removing the  
23 child from this state for a period of time exceeding 90 days. Such notice  
24 shall be sent by restricted mail, return receipt requested, to the last known  
25 address of the other parent.

26 (b) Failure to give notice as required by subsection (a) is an indirect  
27 civil contempt punishable as provided by law. In addition, the court may  
28 assess, against the parent required to give notice, reasonable attorney fees  
29 and any other expenses incurred by the other parent by reason of the  
30 failure to give notice.

31 (c) A change of the residence of a child to another state or removal  
32 of a child from this state for a period of time exceeding 90 days may be  
33 considered a material change of circumstances which justifies modifica-  
34 tion of a prior order of child support or custody.

35 (d) A parent entitled to the custody of a child pursuant to K.S.A.  
36 38-1121, and amendments thereto, shall not be required to give the notice  
37 required by this section to the other parent when the other parent has  
38 been convicted of any crime specified in article 34, 35 or 36 of chapter  
39 21 of the Kansas Statutes Annotated, and amendments thereto, in which  
40 the child is the victim of such crime.

41 (e) This section shall be part of and supplemental to the Kansas par-  
42 entage act.

43 [Sec. 2. K.S.A. 38-1531 is hereby amended to read as follows:

Judicial Council Comments

This bill is an addition to the Kansas Parentage Act that addresses notification of a change in a child's residence by parents who have not been married to each other. This amendment is exactly the same language found in an action for a divorce, separate maintenance or annulment under K.S.A. § 60-1620. Consequently, this amendment now makes it a requirement for all parents, regardless of whether the custody has been decided by a paternity action or in an action for divorce, separate maintenance or annulment, to provide notification of a change in a child's residence.

Sections 2, 3, and 4 were not included in the original House Bill 2627 requested by the Judicial Council.

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1 38-1531. (a) *Filing of petition.* An action pursuant to this code is  
2 commenced by the filing of a petition with the clerk of the district  
3 court.

4 [(b) *Contents of petition.* (1) The petition shall state, if known:

5 [(A) The name, date of birth and residence address of the child;

6 [(B) *except as provided further, the name and residence address*  
7 *of the child's parents. If one parent is the sole legal custodian of the*  
8 *child or only one parent is identified on the child's birth certificate, only*  
9 *such parent's name and residence address is required on the petition;*

10 [(C) the name and residence address of any persons having cus-  
11 tody or control of the child, or the nearest known relative if no  
12 parent can be found; and

13 [(D) plainly and concisely in the language of the statutory def-  
14 inition, the basis for requesting that the court assume jurisdiction  
15 over the child.

16 [(2) The petition shall also state the specific facts which are  
17 relied upon to support the allegation referred to in the preceding  
18 paragraph including any known dates, times and locations.

19 [(3) The proceedings shall be entitled: "In the Interest of  
20 \_\_\_\_\_"

21 [(4) The petition shall contain a request that the court find the  
22 child to be a child in need of care.

23 [(5) The petition shall contain a request that the parent or par-  
24 ents be ordered to pay child support. The request for child support  
25 may be omitted with respect to a parent already ordered to pay  
26 child support for the child and shall be omitted with respect to one  
27 or both parents upon written request of the secretary.

28 [(c) *Motions.* Motions may be made orally or in writing. The  
29 motion shall state with particularity the grounds for the motion  
30 and shall state the relief or order sought.

31 [Sec. 3. K.S.A. 38-1532 is hereby amended to read as follows:  
32 38-1532. Upon the filing of a petition under this code the court  
33 shall proceed by one of the following methods:

34 [(a) Issue summons stating the place and time at which the par-  
35 ties are required to appear and answer the allegations of the pe-  
36 tition, which shall be within 30 days of the date the petition is filed,  
37 and deliver the summons with copies of the petition attached to  
38 the sheriff or a person specially appointed to serve it.

39 [(b) If the child has been taken into protective custody under  
40 the provisions of K.S.A. 38-1542 and a temporary custody hearing  
41 is held as required by K.S.A. 38-1543, a copy of the petition shall  
42 be served at the hearing on each interested party who is in at-  
43 tendance at the hearing and a record of service made a part of the

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1 proceedings. The court shall announce the time the parties will be  
2 required to next appear before the court. Process shall be served  
3 on any interested party not at the temporary custody hearing.

4 [Upon the written request of the petitioner or the county or dis-  
5 trict attorney separate or additional summons shall be issued to  
6 any interested party.

7 [The court shall attempt to notify both parents but may proceed without  
8 notifying both parents if one parent is the sole legal custodian of the child  
9 or only one parent is identified on the child's birth certificate and such  
10 parent is served pursuant to K.S.A. 38-1533 and amendments thereto.

11 [Sec. 4. K.S.A. 38-1533 is hereby amended to read as follows:  
12 38-1533. (a) *Persons upon whom served.* The summons and a copy of  
13 the petition shall be served on the child alleged to be a child in  
14 need of care by serving the guardian *ad litem* appointed for the  
15 child, the parents or parent having legal custody, *identified on the*  
16 *child's birth certificate* or who may be ordered to pay child support  
17 by the court, the person with whom the child is residing and any  
18 other person designated by the county or district attorney.

19 [(b) *Form of summons.* The summons shall be issued by the clerk,  
20 dated the day it is issued, contain the name of the court and the  
21 caption of the case and be in substantially the following form:

22 [(Name of Court)

23 [In the Interest of \_\_\_\_\_ Case No. \_\_\_\_\_

24 [(Names)

25 [Date of birth \_\_\_\_\_

26 [Each a child under 18 years of age

27 [S U M M O N S

28 [TO:

29 [(Names) (Relationship) (Addresses)

30 [\_\_\_\_\_

31 [\_\_\_\_\_

32 [\_\_\_\_\_

33 [\_\_\_\_\_

34 [A petition has been filed in this court, a copy of which is attached.

35 [On \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. the above parent(s), and  
36 any other person having legal custody are required to appear before this court at  
37 \_\_\_\_\_, or prior to that time file your written response to the petition with the  
38 clerk of this court.

39 [Failure to respond or to appear before the court at the above time will not  
40 prevent the court from entering judgment that each child is a child in need of care  
41 if it finds judgment should be granted and removing the child from the custody of  
42 parent, parents or any other present legal custodian until the further order of the  
43 court. The court may order one or both parents to pay child support. If, after a



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1 child has been adjudged to be a child in need of care, the court finds a parent or  
2 parents to be unfit, the court may make an order permanently terminating the  
3 parent's or parents' parental rights.

4 [\_\_\_\_\_, an attorney, has been appointed as guardian *ad litem* for the child  
5 or children. Each parent or legal custodian has the right to appear and be heard  
6 personally either with or without an attorney. The court will appoint an attorney  
7 for any parent who is financially unable to hire one.

8 [Date \_\_\_\_\_, 19\_\_\_\_ Clerk of the District Court  
9 [by \_\_\_\_\_

10 [(Seal)

11 [Sec. 5. K.S.A. 38-1531, 38-1532 and 38-1533 are hereby re-  
12 pealed.]

13 Sec. 2: [6.] This act shall take effect and be in force from and after  
14 its publication in the statute book.

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(Revised 2/98)

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As Amended by House Committee

Session of 1998

HOUSE BILL No. 2854

By Committee on Judiciary

2-10

10 AN ACT concerning civil procedure; relating to the rules of evidence;
11 concerning the authentication of copies of records; amending K.S.A.
12 60-465 and repealing the existing section.

13
14 Be it enacted by the Legislature of the State of Kansas:

15 Section 1. K.S.A. 60-465 is hereby amended to read as follows: 60-
16 465. A writing purporting to be a copy of an official record or of an entry
17 therein, meets the requirements of authentication if (1) the judge finds
18 that the writing purports to be published by authority of the nation, state
19 or subdivision thereof, in which the record is kept; or (2) and evidence
20 has been introduced sufficient to warrant a finding that the writing is a
21 correct copy of the record or entry; or (3). Extrinsic evidence of au-
22 thenticity as a condition precedent to admissibility is not required
23 if (1) the office in which the record is kept is within this state this state
24 the United States or territory or insular possession subject to the dominion
25 of the United States and the writing is attested as a correct copy of the
26 record or entry by a person purporting to be an officer, or a deputy of an
27 officer, having the legal custody of the record; or (4) if (2) the office in
28 which the record is kept is within the United States or territory or
29 insular possession subject to the dominion of the United States and
30 the writing is attested to as required in clause (1) and authenti-
31 cated by seal of the office having custody or, if that office has no
32 seal, a public officer having a seal and having official duties in the
33 district or political subdivision in which the records are kept, cer-
34 tifies under seal that such officer has custody; or (3) the office in
35 which the record is kept is in a foreign state or country, the writing
36 is attested as required in clause (1) and is accompanied by a cer-
37 tificate that such officer has the custody of the record is not within
38 the state; the writing is attested as required in clause (3) of this section
39 and is accompanied by a certificate that such officer has the custody of
40 the record. If the office in which the record is kept is within the United
41 States or within a territory or insular possession subject to the dominion
of the United States, the certificate may be made by a judge of a court
of record of the district or political subdivision in which the record is

OR

by who

1 kept, authenticated by the seal of the court, or may be made by any public
2 officer having a seal of office and having official duties in the district or
3 political subdivision in which the record is kept; authenticated by the seal
4 of the office; If the office in which the record is kept is in a foreign state
5 or country, the certificate may be made by a secretary of an embassy or
6 legation, consul general, consul, vice-consul, or consular agent or by any
7 officer in the foreign service of the United States stationed in the foreign
8 state or country in which the record is kept, and authenticated by the seal
9 of that office.

10 Sec. 2. K.S.A. 60-465 is hereby repealed.

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

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